

FEDERAL COURT OF APPEAL

BETWEEN:

NELL TOUSSAINT

Appellant

And

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER
THE CHARTER COMMITTEE ON POVERTY ISSUES**

PART ONE: FACTS

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

1. The Charter Committee on Poverty Issues (CCPI) was granted intervener status at the Federal Court in the present case to address “issues arising from the requirement to pay fees to process Humanitarian and Compassionate (H & C) Applications for permanent residence pursuant to the IRPA [*Immigration and Refugee Protection Act*] and the impact of such fees on persons living in poverty.”¹

¹ Decision of Prothonothary Aalto, Toronto, Ontario, March 18, 2009 IMM 2926-08.

2. In his decision to grant intervener status, Prothonotary Aalto stated that “CCPI and the other intervener LIFT (Low Income Families Together) would be raising arguments relating to sections 7 and 15 of the *Charter* as well as other arguments relating to patterns of discrimination and inequality, public policy concerns and competing demands on resources.” He found that “this is one of those unique cases that raise issues of public policy, access to justice and discrimination and inequality” such that the Court will benefit from the participation of CCPI and LIFT.²

3. CCPI seeks leave from this Honourable Court to intervene in the appeal to address these same issues as they arise in the Appeal from the Decision of Madam Justice Snider in the Federal Court (2009 FC 873).³

B. Qualifications of CCPI

4. 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* (“the *Charter*”), human rights legislation and other laws in Canada.⁴

5. 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

² *Ibid.*

³ Affidavit of Bonnie Morton Sworn January 25, 2010, para. 16.

⁴ Affidavit of Bonnie Morton, para. 2.

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.⁵

6. 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 issues dealing with the application of section 15 of the *Charter* to poor people. CCPI received funding from the Court Challenges Program of Canada for its intervention in the court below in the present case, and has been granted funding for an intervention in the present Appeal, should this application for intervener status be granted.⁶

7. CCPI has been granted leave to intervene before the Supreme Court of Canada in twelve cases dealing directly or indirectly with poverty issues, including *Baker v. Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817 dealing with H & C Review of an Application from a woman relying on social assistance, and *R. v. Wu*, [2003] 3 S.C.R. 530, dealing with the obligation of courts not to impose fines on offenders who are poor and therefore unable to pay them.⁷

8. In the hearing of the present case at Federal Court, Justice Snider agreed to permit counsel for CCPI to assume carriage of the section 15 arguments on behalf of

⁵ *Ibid.*, para. 3.

⁶ *Ibid.*, para. 6.

⁷ *Ibid.*, para. 7

the Applicants and interveners. Extensive reference is made to the submissions of CCPI in her decision.⁸

B. The Appellant

9. The Appellant, Ms. Nell Toussaint, was at the time of her application, 39 years old and living in dire poverty. She is a single woman of colour, disabled by diabetes and a condition of extensive uterine fibroids and ovarian cysts. A foreign national of Grenada, she has lived in Canada since coming here as a visitor in December, 1999. Her visitor status expired after six months but she established a life in Canada, working over the years as an assembler, a cleaner, a general labourer and a babysitter.⁹

10. Ms. Toussaint sought to normalize her status in Canada by making an H & C Application under section 25(1) of the *IRPA*¹⁰ but was unable to pay the \$550 fee required for filing an H & C Application. Ms. Toussaint's legal aid lawyer wrote on her behalf to ask the Minister of Citizenship and Immigration to exempt her from the fee on the basis that she is indigent and therefore unable to pay it. A response from an Administrative Officer stated that her requested waiver was contrary to the "legislative requirement" in paragraph 10(1)(d) of the *IRPA*, which "requires all applicants to include evidence of payment of the applicable fee." Without a fee waiver or exemption Ms Toussaint is unable to apply for permanent residency on H & C grounds.¹¹

⁸ Ibid, para. 14. Decision of Snider, J. *Nell Toussaint v. Minister of Citizenship and Immigration*, IMM-326-09 2009 FC 87 (hereinafter "Decision of Snider, J.") paras 52, 74, 78, 91, 93, 109, 110, 113, 115.

⁹ Affidavit of Nell Toussaint, sworn January 26, 2009.

¹⁰ S.C. 2001, c. 27.

¹¹ Ibid.

11. Ms. Toussaint challenged the decision not to waive the fee and consider her application on three main grounds:

i) Section 25(1) obliges the Minister to have considered the Appellant's application, providing for a discretion which must be exercised consistently with the purposes of the statute, international human rights law and sections 7 and 15 of the *Charter*;

ii) In adopting a regulation providing for a fee for H & C Applications without also providing for a fee waiver for those who are unable to pay the fee because of poverty, the Governor in Council:

a) violated section 7 of the *Charter* by denying the Appellant access to a process in which interests engaging the right to life, liberty and security of the person may be at stake in manner that is not in accordance with principles of fundamental justice; and

b) violated section 15 of the *Charter* by excluding poor people and people in receipt of public assistance who cannot pay the fee from the benefits of H & C applications, thereby discriminating on the analogous grounds of receipt of public assistance and the social condition of poverty.

iii) Failing to provide for a fee waiver for those in poverty wishing to file H & C applications violated the constitutional principle of the rule of law and the common law right of access to justice by denying the Appellant access to an administrative procedure that engages fundamental rights.

C. The Decision under Appeal

12. Snider, J. found against the Appellant on all of the above grounds advanced. She held, *inter alia*, that:

- The Minister has neither the obligation nor authority under section 25(1) of the *IRPA* to exempt a foreign national from “administrative requirements” such as the payment of fees established pursuant to section 89 of *IRPA* and the Regulation.¹²
- Section 7 of the *Charter* cannot apply to H & C Review because the risk of deportation itself does not in itself engage section 7 and H & C consideration was enacted at “the discretion of Parliament.”¹³
- The imposition of fee requirements is “neutral” in its application, not selectively applied based on stigmatization or stereotype and hence “a legitimate policy decision that may not lend itself to a review under s.15 of the *Charter*.”¹⁴
- The social condition of receipt of public assistance and of poverty are not analogous grounds of discrimination under section 15 of the *Charter*. Justice Snider reasons that these characteristics are not immutable and are not “personal characteristics” which governments “have no legitimate interest in changing.”¹⁵
- The Rule of Law, and the common law right of access to courts does not apply to discretionary administrative procedures such as the H & C Review.¹⁶

13. In considering whether to certify questions for appeal in this case, Madam Justice Snider found that each of the main issues raised by the Appellant and the Interveners is a “serious question of general importance.” Having considered

¹² Decision of Snider, J. at para. 32

¹³ *Ibid*, at para. 47.

¹⁴ *Ibid*, at para. 100

¹⁵ *Ibid*, at para. 72

¹⁶ *Ibid*, at para. 115.

submissions from all of the parties with respect to certified questions, she certified the following as serious questions of general importance:

1. On a proper statutory interpretation of section 25(1) of IRPA, is the Minister obliged to consider a request to grant an exemption from the requirement to pay the H&C processing fee, otherwise required under section 307 of the IRP Regulations?
2. Does the failure of the government (through the GIC) to enact regulations permitting the waiver of fees for foreign nationals living in poverty who wish to make an in-Canada application for permanent resident status pursuant to section 25(1) of IRPA infringe the Applicant's rights under section 7 or section 15 of the *Charter*?
3. Is the failure of the government (through the GIC) to enact regulations permitting the waiver of fees for foreign nationals living in poverty who wish to make an in-Canada application for permanent resident status pursuant to section 25(1) of the IRPA contrary to either the rule of law or the common law constitutional right of access to the Courts?

PART TWO: ISSUES

14. 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

A. Provisions of the IRPA

15. 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.

16. 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).¹⁷

17. 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”.

B. Rule 109 of the Federal Court Rules

18. 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

19. 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.

20. 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 an useful point of view which the initial parties cannot or will not present.”

¹⁷ *Immigration and Refugee Protection Regulations*, SOR/2002-227

C. CCPI's Intervention will Assist in the Determination of Legal Issues Before the Court

21. As in the hearing before Madam Justice Snider, 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. The key legal issues that must be determined in this case are matters of the highest importance for CCPI, on which it has conducted extensive research and consultation over many years and has been granted intervener status to address before the Supreme Court of Canada in the context of other cases.

22. 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) Application of Substantive Equality Model to Poverty

23. The constitutional question before the Court in this Appeal is whether the government may impose a fee for H & C applications for permanent residence in Canada without addressing the unequal burden and/or exclusion which such fees impose on those who, because of poverty and/or reliance on social assistance, cannot afford to pay them.

24. The case goes to the heart of the *Charter's* guarantee of what was affirmed by the Supreme Court of Canada in *Andrews* as a "a positive right to equality in both the substance and the administration of the law" and what this guarantee means

for those living in poverty.¹⁸ Madam Justice Snider has found that the fee requirement is “neutral” and is therefore a reasonable policy choice which ought not to be interfered with by the courts. For poor people, however, the policy is not experienced as neutral and the fact that fees are applied to all applicants does not alter its discriminatory effect.

25. This Appeal comes at a critical moment in the evolution of equality jurisprudence under the *Charter* of particular importance for poor people. In *R. v. Kapp*, the Supreme Court of Canada eschewed the formalism of some applications of the approach to equality claims laid out in the *Law* decision, criticized for having narrowed equality analysis to “an artificial comparator analysis focused on treating likes alike.”¹⁹ The Court called for a recommitment to the ideal of substantive equality as it was affirmed in *Andrews*. As Linden, J. has observed, the message from the Court in *Kapp* is that courts must “view the situation through the eyes of the claimant” and heed the words of Justice Frankfurter (then of the United States Supreme Court), who once cautioned “it was a wise man who said that there is no greater inequality than the equal treatment of unequals” (*Dennis v. United States*, 339 U.S. 162 (1950) at 184).²⁰ The application of this approach to equality to poor people has been central to CCPI’s expertise and to its interventions in previous cases. If granted intervener status, 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.

¹⁸ *Andrews v. Law Society of British Columbia*, [1989 1 S.C.R. 143 at 171 citing *Reference re an Act to Amend the Education Act* (1986), 53 O.R. (2d) 513, at 554. [Hereinafter *Andrews*].

¹⁹ *R. v. Kapp*, 2008 SCC 41 at para 22 [hereinafter, *Kapp*].

²⁰ *Harris v. Canada (Minister of Human Resources and Skills Development)* [2009] F.C.J. No. 70, 2009 FCA 22 at para 27 per Linden, J. (in dissent, but not on this point).

26. CCPI has previously 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*, for example, 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. The underlying issues in that case – 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.²¹

b) Social Condition of Poverty and Receipt of Public Assistance as analogous ground under section 15 of the *Charter*;

27. Madam Justice Snider’s finding that the social condition of poverty and receipt of public assistance are not analogous grounds of discrimination under section 15 of the *Charter*, if upheld, would largely deprive poor people of *Charter* protection from discrimination – whether it be based on invidious stigmatization and targeting or through the exclusionary effect of “neutral” qualifications.

28. Madam Justice Snider’s application of the concept of “immutability” also has serious consequences for a substantive approach to equality. She found that poverty cannot be an analogous ground of discrimination because financial circumstance can change and that, indeed, governments have a legitimate interest in alleviating poverty. However, poor people and other disadvantaged groups may face discrimination at the same time as relying on positive measures to alleviate disadvantage. If granted leave to intervene, CCPI will argue that a substantive equality

²¹ Affidavit of Bonnie Morton, para. 7.

approach to section 15 requires a recognition that a legitimate governmental interest in alleviating the disadvantage of a group does not disqualify the group from the protection of section 15, but rather, reinforces its qualification as a group whose needs and interests are likely to be overlooked. CCPI will examine how the concept of immutability in the analogous grounds analysis can be reconciled with the purpose of section 15, which is not only to prevent discrimination, but to alleviate the burdens caused by discrimination and social disadvantage.

29. The determination of whether a ground qualifies as analogous under section 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.”²²

30. 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 involved in society’s treatment of the group. The issue of whether poverty is 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.²³

²² *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para. 93.

²³ Affidavit of Bonnie Morton, para. 5.

31. Drawing on the extensive evidence in the Record of this case, CCPI will provide insight into the way that people living in poverty suffer from prejudice, stereotypes and negative treatment in the same way as do groups enumerated or previously recognized as analogous under section 15. CCPI will assist the Court in situating the Applicants' experience within the context of broader patterns of discrimination against poor people linked with denial of dignity and equal citizenship.

c) 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 H & C Review

32. Another issue to be determined in this Appeal 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."²⁴ 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 in the context of administrative decision-making.

²⁴ *Rodriguez v. B.C. (A.G.)*, [1993] 3 S.C.R. 519 at 585, *per* Sopinka J.; Affidavit of Bonnie Morton, para. 16.

33. The Supreme Court of Canada has recognized the “profound importance of an H & C decision to those affected.”²⁵ The interests at stake in access to H & C Review may include whether families can remain together, psychological and physical health, the best interests of children, access to work, housing or a decent standard of living and protection from violence and sexual exploitation. This appeal thus raises the question of whether poor people may be denied consideration of fundamental interests related to life, liberty and security of the person because of their incapacity to pay fees.

34. The court below held that section 7 protections cannot be applied to H & C Applications because there is no entitlement to this procedure. It is provided at the discretion of parliament and is discretionary in nature. For poor people, however, basic security and access to income, housing or protection of family is often tied to discretionary decision-making in administrative law linked to social programs.²⁶

35. CCPI’s unique history and perspective will be relevant and useful to the Court’s consideration of the application of section 7 in these contexts. CCPI has intervened before the Supreme Court of Canada in a number of cases, including *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 and how section 7 and principles of fundamental justice apply to procedures which may not, in

²⁵ *Baker, op. cit.*, at para.

²⁶ Affidavit of Bonnie Morton.

themselves, be constitutionally required but which nevertheless engage section 7 protected interests.

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

36. 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. These are issues in which CCPI has considerable expertise and with which it has provided other courts with assistance.²⁷

37. 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 may have fiscal implications. CCPI will argue that the framework must be compatible with values of 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.²⁸

e) The Constitutional Principle of the Rule of Law and Access to Justice Applies to Administrative Procedures in Which Rights are at Stake

38. An important advance in ensuring equality for poor people in the administration of justice was made in the case of *Polewsky v. Home Hardware Stores*

²⁷ Affidavit of Bonnie Morton, para. 8

²⁸ *R. v. Oakes*, [1986] 1 S.C.R. 103, paragraph 64.

*Ltd.*²⁹ In that case the Divisional Court found that the failure to waive Small Claims Court fees for indigent individuals violated both the common law right of access to courts *in forma pauperis* and the constitutional principle of the rule of law. The decision resulted in amendments to the *Administration of Justice Act* permitting waiver of court fees in cases of demonstrated poverty.

39. Madam Justice Snider ruled against CCPI's and the Applicants' argument in favour of applying these same principles to the present case. She found that "the principles applied in *Polewsky* do not extend to discretionary administrative determinations."

40. If granted intervener status, CCPI will argue that the rule of law must equally apply to access to administrative decision-makers exercising conferred discretion as to courts.³⁰ In an era in which *Charter* rights are increasingly considered in administrative procedures, exempting administrative processes and tribunals from the application of the rule of law would be a serious erosion of this constitutional principle. CCPI's experience in defending and promoting access to justice principles and its understanding of the importance of ensuring equitable access to administrative bodies with which poor people most often interact will be useful to the Court in considering this important aspect of Madam Justice Snider's decision.³¹

41. Drawing on CCPI's particular expertise in international human rights law and its application to the rights of poor people in Canada, CCPI will argue that

²⁹ *Polewsky v. Home Hardware Stores Ltd.* (2003), 229 D.L.R. (4th) 308.

³⁰ Affidavit of Bonnie Morton, para. 36.

³¹ *Ibid.*

international human rights values and the international rule of law ought to be considered in resolving both the constitutional and statutory interpretation issues raised in this Appeal. CCPI will argue that ensuring equal access to H & C applications by those disadvantaged by poverty is mandated by Canada's international human rights obligations.³²

C. The Application of the CUPE Factors to the Present Intervention Application

42. In *CUPE v. Canadian Airlines Ltd.* [2000] F.C.J. No. 220, the Federal Court of Appeal set out a number of additional factors to be considered in the determination of whether leave to intervene should be granted. A proposed intervener need not satisfy all of these criteria.³³ Prothonothary Aalto found in granting CCPI intervener standing in the court below that CCPI meets "either all of the tests or substantially all of the tests."³⁴

43. 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?

³² *Ibid*, at para. 37.

³³ *Boutique Jacob Inc. v. Paintainer Ltd.*, [2006] F.C.J. No. 1947 at para.19 (F.C.A.); *DBC Marine Safety Systems Ltd. v. Canada (Comissioner of Patents)*, [2008] F.C.J. No. 852 (F.C.A.);

³⁴ *Decision of Prothonothary Aalto*, op cit.

- (vi) Can the Court hear and decide the case on its merits without the proposed intervener?

(i) The Intervener is directly affected

44. 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*.³⁵

45. CCPI represents the interests of people living in poverty. 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 directly affected if poor people are barred from accessing certain legal procedures because of fees. As noted above, the specific legal issues raised in this case directly affect CCPI's mandate.³⁶

(ii) These matters raise an issue of public importance

46. 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,

³⁵ *Norcan v. Lebrock*, [1969] S.C.R. 665; *R. v. Finta*, [1993] 1 S.C.R. 1138.

³⁶ Affidavit of Bonnie Morton, paras 16, 21.

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.³⁷

47. 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. ...³⁸

48. This Appeal also raises squarely the issue of access to justice for the poor. There has been widespread concern within the legal profession, among judges and within the public at large about the increasing barriers facing poor people in relation to access to justice as well as whether such barriers constitute violations of the *Charter*.³⁹

49. Lastly, the case raises the question of when courts ought to defer to Parliament or the Executive in matters related to resources and benefits. These are issues of broad public importance and debate.

³⁷ *CUPE v. Canadian Airlines Ltd.* [2000] F.C.J. No. 220 (F.C.A.) at para. 8.

³⁸ Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice, 2000 at 106.

³⁹ Affidavit of Bonnie Morton, para. 24.

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

50. The *Charter* issues raised in this case engage both the particular fact situation of the Appellant and the broader public policy issues at stake. Under the section 15 analysis, for example, the situation of the Appellant must be understood in the context of the treatment of the group to which she belongs. CCPI is uniquely placed to address the broader social dimension of the *Charter* issues without straying from the particular case before the Court. CCPI has had 20 years of experience in intervening before courts, administrative bodies and international fora to provide assistance in addressing these issues.⁴⁰ CCPI's history with the issues before the Court and its accountability to the broader community of people in poverty provides it with a perspective that is not available to the Appellant.

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

51. The Appellant has no particular experience or expertise in the broad issues of public policy or the scope of the *Charter*. She is poor and in no position to direct research or co-ordinate consultations with others about the broader public policy dimensions of her case. The Court below agreed to allowing CCPI to play the lead role in relation to presenting the section 15 analysis on behalf of the Appellant and the other intervener, both in written pleadings and oral argument.

⁴⁰ Affidavit of Bonnie Morton, paras. 2, 8 – 10..

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

52. The Supreme Court of Canada has, on twelve occasions, granted CCPI standing to intervene in matters that directly impact those living in poverty.⁴¹ In each case, CCPI has intervened on issues similar to those certified by Madam Justice Snider for the present appeal. In addition to those mentioned above, CCPI's interventions have included: *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 79; *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.⁴²

53. The proposed Intervener's unique expertise is crucial to contextualize the Court's consideration of issues related to poverty and receipt of social assistance. 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.⁴³

⁴¹ Ibid, at paras 7 – 12.

⁴² Affidavit of Bonnie Morton, para. 10.

⁴³ Affidavit of Bonnie Morton, para. 4.

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

54. 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 case 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, in CCPI's respectful submission, consideration of the arguments of the proposed Intervener.

55. 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 case and will present arguments which supplement those of the parties and that have not or cannot be presented by the Applicant or Respondent.⁴⁴ The interests of justice are thus better served by the intervention.

PART FOUR: ORDER SOUGHT

56. 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.

⁴⁴ Affidavit of Bonnie Morton, at para. 40.

All of which is respectfully submitted this 25th day of January, 2010.

WeirFoulds LLP

The Exchange Tower
130 King Street West, Suite 1600
Toronto, ON MX 1J5

Raj Anand

LSUC #19763L

Tel: (416) 947-5091

Fax: (416) 365-1876

Counsel for the Proposed Intervener
Charter Committee on Poverty Issues

PART FIVE: AUTHORITIES

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