

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

NELL TOUSSAINT

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

MOTION UNDER Rule 13.02 of the *Rules of Civil Procedure*

FACTUM OF THE INTENDED INTERVENERS

December 13, 2021

WEIRFOULDS LLP

Barristers and Solicitors
Suite 4100 – 66 Wellington Street West
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Raj Anand (LSO# 19763L)

ranand@weirfoulds.com

Megan Mah (LSO # 70967K)

mmah@weirfoulds.com

Tel: 416-365-1110

Fax: 416-365-1876

**Lawyers for the Moving Parties,
the Colour of Poverty/Colour of Change
Network, the Black Legal Action Centre, the
South Asian Legal Clinic of Ontario, and the
Chinese and Southeast Asian Legal Clinic**

TO: **ANDREW C. DEKANY**
Barrister & Solicitor
5 Edenvale Crescent
Toronto, ON M9A 4A5

Andrew C. Dekany (LSO # 18383F)
andrewcdekany@gmail.com

Tel: 416-888-8877

Lawyers for the Plaintiff
Nell Toussaint

AND TO: **THE ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

David Tyndale
david.tyndale@justice.gc.ca

Asha Gafar
asha.gafar@justice.gc.ca

Tel: 647-256-7309 / 647-256-0720
Fax: 416-954-8982

Lawyers for the Defendant,
The Attorney General of Canada

**ONTARIO
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FACTUM OF THE INTENDED INTERVENERS

PART 1 - INTRODUCTION

1. The Colour of Poverty/Colour of Change Network (“**COP-COC**”), the Black Legal Action Centre (“**BLAC**”), the South Asian Legal Clinic of Ontario (“**SALCO**”), and the Chinese and Southeast Asian Legal Clinic (“**CSALC**”) (together, the “**Coalition**”), seek leave to intervene as a friend of the Court in the defendant’s motion to strike.

2. The motion raises issues related to the constitutionality of the defendant’s failure to provide essential healthcare benefits to racialized irregular migrants under the Interim Federal Health Program, and the interpretation of Canada’s human rights obligations under international law. These issues directly impact the Coalition, its members, and its members’ respective clients or communities. Furthermore, the Coalition’s longstanding interest and expertise in the areas of racialized poverty in health, and racialized poverty in immigration and newcomer settlement, and in advancing the rights of racialized communities' members, immigrants, refugees, and persons with precarious status, will be of assistance to the Court.

3. COP-COC, BLAC, SALCO, and CSALC can each assist the Court in similar, overlapping but complementary ways. As a result, they wish to intervene jointly in the interests of efficiency and judicial economy.

4. If permitted leave to intervene, the Coalition seeks to file a factum of no more than 20 pages, and to make oral argument for 20 minutes.

PART II – FACTS

Nature of the Proceeding

5. The plaintiff seeks damages and declaratory relief with respect to her exclusion from healthcare benefits under the Interim Federal Health Program between July 2009 and April 2013, and the constitutionality of the defendant's failure to provide irregular migrants with essential healthcare benefits. The plaintiff also seeks damages and declaratory relief with respect to the defendant's failure to give effect to the Views of the United Nations Human Rights Committee regarding the plaintiff's exclusion from the Interim Federal Health Program.

6. The defendant has not yet delivered its statement of defence. Instead, the defendant has brought a motion to strike the plaintiff's amended statement of claim on the basis that it discloses no reasonable cause of action, that the action is frivolous and vexatious, and an abuse of process, and on the basis that the court has no jurisdiction over a portion of the relief claimed by the plaintiff.

The Coalition's Interest and Expertise in the Motion to Strike

COP-COC, BLAC, SALCO, and CSALC's Respective Mandates

7. COP-COC is a community-based province-wide network of organizations and individuals who came together with a view to raising public awareness around issues concerning and affecting racialized communities in order to best bring about racial equality in Canadian society.¹

¹ Affidavit of Michael Kerr sworn October 21, 2021 ("COP-COC Affidavit") at para 3.

8. COP-COC strives to work with and assist all members of Ontario's diverse racialized communities to build shared awareness of the issues, disparities and inequities that have direct and indirect impact on each of their individual and collective life chances, life opportunities and life outcomes.²

9. BLAC is a not-for-profit specialty law clinic whose mandate is to address individual and systemic anti-Black racism in the Province of Ontario. BLAC is the only legal clinic in Ontario that focuses specifically on this issue. As such, BLAC has particular expertise on the issues of race and anti-Black racism. This includes expertise and experience in issues experienced by Black migrants, including Black irregular migrants.³

10. Moreover, by virtue of its role in the community, BLAC also has specialized knowledge of how anti-Black racism in the justice system, and in the exercise of government policy, impacts the community at large, as a result of the fraught – historically and ongoing – relationship between the Black community and the justice system and government.⁴

11. SALCO was founded in 1999 by lawyers and community organizers in Toronto's South Asian community. SALCO's mandate is two-pronged: (a) to provide pro bono front-line legal advice, brief services, and legal representation to low-income South Asians in Ontario; and (b) to engage in law reform, community development, and public legal education at the municipal, provincial, and federal levels.⁵

12. SALCO's mandate includes extensive law reform on issues that impact the South Asian communities in Canada, including test cases, submissions at various levels of government in Canada, and submissions to international human rights bodies. SALCO has participated in law reform activity in the areas of immigration, criminal law, anti-racism, policing, human rights, income maintenance, poverty reduction, housing, employment, gender-based violence, forced marriage, and human trafficking.⁶

² COP-COC Affidavit at para 4.

³ Affidavit of Moya Teklu sworn October 21, 2021 (“BLAC Affidavit”) at para 3.

⁴ BLAC Affidavit at para 3.

⁵ Affidavit of Shalini Konanur sworn October 21, 2021 (“SALCO Affidavit”) at para 3.

⁶ SALCO Affidavit at para 8.

13. CSALC – formerly known as the Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCALC) – is a not-for-profit organization incorporated under the laws of the Province of Ontario. CSALC provides free legal services to and acts as an advocacy group for non-English speaking, low-income members of the Chinese, Vietnamese, Cambodian and Laotian communities living in Ontario.⁷

14. Founded in 1987, CSALC has provided legal services and representation to tens of thousands of clients in various areas of law including immigration and citizenship, landlord and tenant, social assistance, employment, human rights and other areas of law affecting low-income members of the Chinese, Vietnamese, Cambodian and Laotian communities.⁸

The Coalition's Experience with Test Case Litigation and Interventions

15. The Coalition has significant expertise and experience with test case litigation and systemic advocacy. For example, members of the Coalition, individually and collectively, were granted intervener status in the following cases:

- (a) COP-COC and CSALC were granted intervener status as a coalition by the Court of Appeal for Ontario in *Tanudjaja v Canada (Attorney General)* [2014] O.J. No. 5689, a case dealing with the right to housing. COP-COC and CSALC brought forward the perspectives of communities of colour in the context of the need for affordable housing in Canada.⁹
- (b) COP-COC, SALCO and CSALC intervened as a coalition in *R v Morris*, 2021 ONCA 680, which dealt with the manner in which systemic discrimination should impact the sentencing framework for racialized Canadians.¹⁰ BLAC was also granted intervener status in *R v Morris*, and intervened together with the Canadian Association of Black Lawyers.¹¹

⁷ Affidavit of Gary Yee sworn October 22, 2021 (“CSALC Affidavit”) at paras 3-4.

⁸ CSALC Affidavit at para 6.

⁹ COP-COC Affidavit at para 13; CSALC Affidavit at para 9.

¹⁰ COP-COC Affidavit at para 14.

¹¹ BLAC Affidavit at para 6.

- (c) COP-COC intervened in coalition with the Income Security Advocacy Centre in several cases that were heard at the same time before the Supreme Court of Canada dealing with the issue of mandatory victim surcharge (see *R. v Boudreault*, 2018 SCC 58). The Supreme Court of Canada found that the mandatory victim surcharge violated s.12 of the *Canadian Charter of Rights and Freedoms*, a position that COP-COC advocated for in view of the disproportionate impact of the mandatory surcharge on racialized communities.¹²
- (d) In October, 2018, CSALC appeared as an intervener before the Supreme Court of Canada in *R. v Le* (Court File No. 37971) in coalition with the Federation of Asian Canadian Lawyers (FACL). CSALC and FACL argued that the Court should not use a racialized person's experience with police to infer that s/he was not detained as such an approach can result in perpetuation of racial profiling.¹³
- (e) In March, 2018 CSALC appeared as an intervener before the Supreme Court of Canada in the case of *Frank v Canada (Attorney General)*, 2019 SCC 1, which deals with the right to vote for non-resident Canadian citizens.¹⁴
- (f) In November 2017, CSALC appeared as an intervener before the Supreme Court of Canada in *R. v Wong*, 2018 SCC 25, a case dealing with the validity of a guilty plea uninformed of immigration consequences.¹⁵
- (g) In January 2019, CSALC and SALCO intervened as a coalition before the Federal Court of Appeal in *Revell v Canada (MCI)* (Court File No. A-316-17), which dealt with the issue of whether a finding of criminal inadmissibility under the *Immigration and Refugee Protection Act (IRPA)* engages s.7 of the *Canadian Charter of Rights and Freedoms*.¹⁶

¹² COP-COC Affidavit at para 12.

¹³ CSALC Affidavit at para 9.

¹⁴ CSALC Affidavit at para 9.

¹⁵ CSALC Affidavit at para 9.

¹⁶ CSALC Affidavit at para 9.

- (h) In February 2018 CSALC was granted intervener status by the Canadian Human Rights Tribunal in *Attaran v Immigration, Refugee and Citizenship Canada* (Tribunal File No. T2163/3716), dealing with the family class sponsorship system under the current immigration system.¹⁷
- (i) In September 2017, as part of a coalition, CSALC was granted intervener status by the Supreme Court of Canada in the matter of *Canadian Human Rights Commission v A.G. Canada* (Court File No.: 37208) dealing with the interpretation of s. 5 of the *Canadian Human Rights Act*.¹⁸
- (j) In 2017, CSALC launched a constitutional challenge to a provision under the Employment Insurance (EI) Regulations which limits the eligibility for compassionate leave benefits to individuals whose family members have been treated by a “medical doctor” or a health professional equivalent to a medical doctor in Canada.¹⁹
- (k) CSALC and SALCO appeared before the Federal Court in *Canadian Council on Social Development v Canada (Attorney General)* [2012] F.C.J. No. 1647, a case dealing with the constitutional legality of the cancellation of the long form census by the federal government.²⁰
- (l) CSALC was counsel in the case of *Vietnamese Association of Toronto v Toronto (City)* [2007] 85 O.R. (3d) 656 challenging the City’s protocol under which the only national flags which could be flown on the courtesy flagpoles in Nathan Phillips Square were flags of nations recognized by the federal Department of Foreign Affairs.²¹
- (m) CSALC was granted intervener status in *Duong v Taalman Engineered Products Ltd.* (2004) (Court File No. 04-159-DV) (judgment on consent to order a new trial),

¹⁷ CSALC Affidavit at para 9.

¹⁸ CSALC Affidavit at para 9.

¹⁹ CSALC Affidavit at para 9.

²⁰ CSALC Affidavit at para 9; SALCO Affidavit at para 11.

²¹ CSALC Affidavit at para 9.

a case addressing the right of indigent, non-English speaking immigrants to publicly funded interpretation services in Ontario Small Claims Court matters. Shortly after the appeal in *Duong* was filed, the Ontario government announced its plan to provide free interpretation services in Small Claims Court for litigants who are on social assistance or otherwise cannot afford to pay for their own interpreter.²²

- (n) CSALC was co-counsel in the case of *Mack v Canada (Attorney General)* (2002) 60 O.R. (3d) 737 (Ont. C.A.), (leave to appeal to S.C.C. denied), representing three representative plaintiffs seeking redress for the *Chinese Immigration Act, 1885* (the “Chinese Head Tax Act”) and the *Chinese Immigration Act, 1923* (the “Exclusion Act”).²³
- (o) CSALC was granted intervener status in the case of *A.L.R. v The Queen* (Man.) (2001) (Court File No. 27659) (S.C.C.) (judgment on consent to order a new trial), which dealt with the scope and standard of interpretation services for the accused in a criminal trial.²⁴
- (p) CSALC, along with several other organizations, were granted intervener status as a coalition in the case of *Francis v Minister of Citizenship & Immigration* (1998) 40 O.R. (3d) 74 (Ont. C.A.), which raised the issue of the rights of Canadian-born children whose parents were non-status immigrants in Canada.²⁵
- (q) CSALC represented the Chinese Canadian National Council (CCNC), which was granted intervener status in the case of *R. v Koh* [1998] 42 O.R. (3d) 668 (Ont. C.A.), a case dealing with challenging jury members with respect to their racial bias against accused of Chinese origin.²⁶
- (r) CSALC represented several clients in *Bule v Canada (Minister of Citizenship & Immigration)* (1998) 49 Imm. L.R. (2d) (I.A.D.) to challenge s. 6(1) of the former

²² CSALC Affidavit at para 9.

²³ CSALC Affidavit at para 9.

²⁴ CSALC Affidavit at para 9.

²⁵ CSALC Affidavit at para 9.

²⁶ CSALC Affidavit at para 9.

Immigration Act – a provision which required a sponsored fiancé(e) to marry his/her sponsor within 90 days after landing.²⁷

- (s) CSALC acted as co-counsel for the Chinese Canadian National Council (Toronto Chapter) in an inquest into the death of Edmond Yu, a Chinese Canadian man with a psychiatric history who was shot to death by a Toronto police officer in February 1997.²⁸
- (t) SALCO appeared before the Supreme Court of Canada in *Wing Wha Wong v Her Majesty the Queen*, 2017 CanLII 16824 (leave to appeal to S.C.C. granted - SCC Docket 37367), dealing with whether criminal guilty pleas should be struck down when an accused is uninformed of the immigration consequences of his or her plea.²⁹
- (u) SALCO appeared before the Supreme Court of Canada in *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, dealing with the expansion of freedom of religion to spaces of worship.³⁰
- (v) SALCO appeared before the Supreme Court of Canada in *Attorney General of Canada on behalf of the Republic of India v Surjit Singh Badesha, et al*, 2017 SCC 44, dealing with the process of extradition to India of Canadian citizens within the context of an “honour-based” crime and its impact on life, liberty, and security of the person.³¹
- (w) SALCO appeared before the Supreme Court of Canada in *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, dealing with racial profiling, in which

²⁷ CSALC Affidavit at para 9.

²⁸ CSALC Affidavit at para 9.

²⁹ SALCO Affidavit at para 10.

³⁰ SALCO Affidavit at para 10.

³¹ SALCO Affidavit at para 10.

an employee was prevented from taking a mandatory training course in the United States after being placed on a list of people banned from entry.³²

- (x) SALCO appeared before the Supreme Court of Canada in *R v N.S.*, 2012 SCC 72, dealing with reconciling a Muslim woman's religious freedom and the accused's right to a fair trial.³³
- (y) SALCO appeared before the Supreme Court of Canada in *Canada (Attorney General) v Mavi*, 2011 SCC 30, addressing the extent to which a duty of procedural fairness is owed by the government to sponsors under the family class immigration regime when enforcing sponsorship debts.³⁴
- (z) SALCO appeared before the Federal Court in *Saju Begum v Minister of Citizenship and Immigration*, 2017 FC 409, to provide arguments about the impact of immigration income criteria on racialized applicants to the parent and grandparent sponsorship program.³⁵
- (aa) In *Alvin Brown v Canada (MCI)*, 2017 FC 710, SALCO represented a third party interest group at the Federal Court in a case that addressed Canada's indefinite immigration detention legislation.³⁶
- (bb) SALCO was granted intervener status in *Peel Law Association v Pieters*, 2013 ONCA 396, dealing with the burden of proof and the role of social science evidence in proving discrimination.³⁷
- (cc) SALCO was granted intervener status in *Metcalf v Scott*, [2011] O.J. No. 2004 (Sup. Ct.), dealing with the jurisdiction of the Special Investigations Unit to investigate an alleged sexual assault by a police officer who subsequently retired.³⁸

³² SALCO Affidavit at para 10.

³³ SALCO Affidavit at para 10.

³⁴ SALCO Affidavit at para 10.

³⁵ SALCO Affidavit at para 11.

³⁶ SALCO Affidavit at para 11.

³⁷ SALCO Affidavit at para 12.

³⁸ SALCO Affidavit at para 12.

- (dd) SALCO was granted intervener status in *Khatkur v Peel District School Board*, *Grewal v Peel District School Board* and *Goel v Peel District School Board*, a case before the Human Rights Tribunal of Ontario dealing with religious and racial discrimination within the school system.³⁹
- (ee) SALCO was granted intervener status in *R v Peart*, 2017 ONSC 782 (CanLII), involving the right to an inquest for migrant workers in cases of death.⁴⁰

16. In addition to test case litigation, members of the Coalition, individually and collectively, have extensive experience with the international human rights legal system. The Coalition and its members have made submissions and appeared before the UN Human Rights Council, the UN Committee on the Elimination of Racial Discrimination (CERD), the UN Committee on Economic, Social and Cultural Rights, the Inter-American Human Rights Commission of the Organization of American States, and the United Nations Committee hearing on the Convention on the Elimination of Racial Discrimination.⁴¹

17. Members of the Coalition, individually and collectively, have a long history of law reform activities. They have been involved in the development of the Poverty Reduction Strategy in Ontario and at the federal level. They have also been invited to make submissions before all levels of government, including the provincial Standing Committee on Finance, the Ontario Minister of Finance's consultation, the Parliamentary Standing Committee on Finance, and the Standing Senate Committee on Social Affairs, Science and Technology. Members of the Coalition have also been consulted by bodies such as the Ontario Human Rights Commission, the Law Commission of Ontario and the Office of the Fairness Commissioner on issues affecting racialized communities.⁴²

³⁹ SALCO Affidavit at para 12.

⁴⁰ SALCO Affidavit at para 12.

⁴¹ COP-COC Affidavit at paras 23-28; CSALC Affidavit at paras 11-14; SALCO Affidavit at paras 13-15.

⁴² COP-COC Affidavit at paras 19-22; CSALC Affidavit at para 8; SALCO Affidavit at paras 13-15.

The Coalition's Special Interest in the Motion

18. The Coalition has a special interest in the issues raised in the defendant's motion to strike for the following reasons:

- (a) Irregular migrants are disproportionately racialized. Members of the Coalition, individually and collectively, have extensive experience in advocating to advance the rights of racialized communities in Canada with varying degrees of immigration status, including irregular migrants. The Coalition's work focuses on, among other things, the racialization of poverty, racialized poverty in health and child welfare, and racialized poverty in immigration and newcomer settlement.
- (b) This action raises issues of public importance, specifically, the constitutionality of the government's failure to provide essential healthcare benefits to irregular migrants under the Interim Federal Health Program, and its failure to give effect to Canada's obligations under international law with respect to such benefits. The Coalition is particularly interested in the outcome of this proceeding, given the disproportionate ways in which racialized irregular migrants are impacted by the government's policies with respect to essential healthcare benefits.
- (c) The Coalition's submissions will be of assistance to the Court in deciding this issue, as well as the issue of whether the action should be dismissed at an early stage without proceeding to a hearing on the merits of the action. The Coalition's submissions will be grounded in its particular expertise and experience, and its mandate to ensure the protection of fundamental rights and liberties for all racialized Ontarians, including racialized irregular migrants.⁴³

The Coalition's Proposed Arguments

19. If it is granted leave to intervene, the Coalition will make the following legal arguments:

⁴³ COP-COC Affidavit at paras 29-35; BLAC Affidavit at paras 7-9; SALCO Affidavit at paras 17-19; CSALC Affidavit at paras 17-21.

- (a) The existence and impact of systemic discrimination and systemic barriers, as recognized by Courts and well understood in society, must be considered when determining whether it is appropriate to dismiss a novel claim on a motion to strike, particularly where vulnerable and marginalized groups may be impacted by such a dismissal;
- (b) The issue of whether the government's failure to give effect to the Views of the United Nations Human Rights Committee constitutes a breach of the *Charter* engages the interests of individuals and groups beyond the parties, particularly racialized groups and racialized irregular migrants. It is a novel and arguable issue that must be decided on the merits of the action;
- (c) As recognized by the Supreme Court in *Nevsun Resources Ltd. v Araya*, 2020 SCC 5, Canadian courts play an important role in the ongoing development of international law. Courts must consider systemic discrimination and systemic barriers when interpreting Canada's obligations under international law, including its obligations under customary international law norms;
- (d) In particular, Courts must consider the impact of systemic discrimination and systemic barriers when determining appropriate remedies for violations of the rights contained in ratified international covenants and treaties, including remedies for breaches of the *International Covenant on Civil and Political Rights*; and
- (e) The Supreme Court has recognized that customary international law norms form part of the Canadian common law. Again, the effect of systemic discrimination and systemic barriers must be factored in when interpreting such customary international law norms in the context of a party's rights under the *Charter*.⁴⁴

⁴⁴ COP-COC Affidavit at para 36.

PART III – ISSUES AND LAW

20. Rule 13.02 of the *Rules of Civil Procedure* states the following:

Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.⁴⁵

21. On a motion for leave to intervene, the Court will consider the following factors: (a) the nature of the case and the issues in the proceedings; (b) whether the proposed intervener can make a useful contribution to the resolution of the issues; and (c) whether intervention will cause injustice to the parties to the litigation.⁴⁶ In making its determination, the Court may consider the interests of the intervener's constituency, the special knowledge and expertise the proposed intervener possesses and the unique perspective of the proposed intervener.⁴⁷

22. Courts have recognized that the threshold for granting intervener status in a public interest or public policy case is lower than it is for a private interest case.⁴⁸ The issues in this case clearly engage both the public interest and public policy, as they relate to the dismissal of a novel claim on a motion to strike, and access to healthcare for vulnerable and marginalized groups.

23. The plaintiff's action and the defendant's motion to strike also raise *Charter* issues, for which greater latitude is granted to intervener motions. Specifically, the Court of Appeal has stated that in constitutional cases, including cases under the *Charter*, "the judgment has a great impact on others who are not immediate parties to the proceedings and, for that reason, there has been a relaxation of the rules heretofore governing the disposition of applications for leave to intervene and has increased the desirability of permitting some such interventions."⁴⁹ Courts have also recognized that in *Charter* cases, it is important for the court "to receive a diversity of representations reflecting the wide-ranging impact of its decision".⁵⁰

⁴⁵ *Rules of Civil Procedure*, RRO 1990, Reg 194, Rule 13.02.

⁴⁶ *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd.*, 74 OR (2d) 164 (ON CA) [*Peel*] at para 10; *Bedford v Canada (Attorney General)*, 2009 ONCA 669 at para 2.

⁴⁷ *Peel*, *supra* note 46 at para 8.

⁴⁸ *Trinity Western University v Law Society of Upper Canada*, 2014 ONSC 5541 [*Trinity Western*] at para 8.

⁴⁹ *Peel*, *supra* note 46 at para 6.

⁵⁰ *Trinity Western*, *supra* note 48 at para 9; *Ontario (Attorney General) v Dieleman*, 1993 CanLII 5478 (ONSC) at para 7.

24. The Coalition should be granted leave to intervene because (a) the nature of the motion and the issues involved are well within the Coalition's area of interest and expertise; (b) the Coalition will make a useful contribution to the resolution of the issues; and (c) the Coalition's intervention will not cause injustice to the parties to the litigation.

(a) The Nature of the Motion and the Issues Involved are Well Within the Coalition's Area of Interest and Expertise

25. The nature and subject matter of the plaintiff's action and the defendant's motion to strike are well within the Coalition's area of interest and expertise. As set out above, the Coalition and its members have been granted intervener status by various levels of courts and/or tribunals, in recognition of their expertise in the areas of constitutional and human rights law as they affect members of racialized communities.

26. The Coalition has a special interest in the issues raised in this proceeding because of the potential impact of this case on all racialized communities, including but not limited to racialized irregular migrants. The Coalition and its members have an interest in the outcome of this case because of their longstanding interest and expertise in the areas of racialized poverty in health, and racialized poverty in immigration and newcomer settlement, and in advancing the rights of racialized communities' members, immigrants, refugees, and persons with precarious status.

27. In addition, the individuals and communities served by the Coalition and its members will be directly affected by the outcome of this proceeding. The Coalition and its members will be well placed to put forward the perspectives of racialized irregular migrants with respect to the issues raised by this case.

(b) The Coalition Will Make a Useful Contribution to the Resolution of the Motion

28. The Coalition can make a useful contribution to the proceeding, beyond that of the existing parties and the other prospective interveners. Specifically, the Coalition is in a unique position to make a contribution to the deliberation of the issues raised by this case given the mandate of its members, and their relevant work and experience with members of racialized communities. The Coalition and its members will provide a useful and unique contribution, given

their particular expertise on the issue of systemic racism, the racialization of poverty in Canada, and the racialization of poverty in healthcare and immigration and newcomer settlement.⁵¹

29. The communities represented by the Coalition and its members have an interest in the outcome of this case because of the systemic barriers faced by racialized communities with respect to essential healthcare benefits. The Coalition and its members will be well placed to put forward the perspectives of racialized irregular migrants with respect to the issues raised by this case.⁵²

30. Courts have stated that “some degree of overlap between the parties and a public interest intervener is to be expected. This is particularly the case in constitutional cases where, like in the present Application, there are few underlying factual issues to be resolved by the Court.”⁵³ The fact that an intervener and a party may “cover some of the same topics or rely on the same authorities relevant to those topics, does not alone determine whether the proposed intervener can offer a fresh perspective.”⁵⁴

31. In this case, the Coalition will bring a useful and different perspective to the motion by addressing the issues from the viewpoint of racialized communities concerned about the racialization of poverty, systemic discrimination in healthcare, and the impact of a dismissal of the action at an early stage without proceeding to a hearing on the merits.

(c) The Coalition’s Intervention Will Not Cause Injustice to the Parties

32. The Coalition’s intervention will not cause any delay, prejudice, or injustice to the parties. Although there are multiple prospective interveners seeking to intervene in this motion, this is not a case where the proposed interventions will jeopardize the timetable set out for the motion. The involvement of the prospective interveners, including the Coalition, will be limited to legal submissions. The Coalition does not seek to raise any new issues in this intervention.

⁵¹ COP-COC Affidavit at para 39; BLAC Affidavit at para 13; SALCO Affidavit at para 23; CSALC Affidavit at para 25.

⁵² COP-COC Affidavit at para 40; BLAC Affidavit at para 14; SALCO Affidavit at para 24; CSALC Affidavit at para 26.

⁵³ [*Working Families Ontario v Ontario*](#), 2021 ONSC 3652 at para 7.

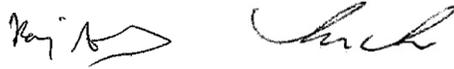
⁵⁴ *Ibid* at para 8.

33. The Coalition will liaise with other interveners in this motion and this action to ensure that their submissions are not duplicative. As stated above, COP-COC, BLAC, SALCO, and CSALC can each assist the Court in similar and complementary ways. They wish to intervene jointly in the interests of efficiency and judicial economy. The Coalition will not seek the costs of this motion, and asks that it not be liable for costs to any other party or intervener.

PART IV – ORDER REQUESTED

34. The Coalition requests an Order that the Coalition be granted leave to intervene as a friend of the Court at the hearing of the defendant's motion to strike, to file a factum of no more than 20 pages, and to make oral argument for 20 minutes. The Coalition further requests an Order that the Coalition shall not be entitled to or liable for costs against any party or intervener.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



December 13, 2021

**Raj Anand and Megan Mah
Counsel for the Moving Parties,
the Colour of Poverty/Colour of
Change Network, the Black Legal
Action Centre, the South Asian
Legal Clinic of Ontario, and the
Chinese and Southeast Asian
Legal Clinic**

SCHEDULE "A"
LIST OF AUTHORITIES

1. [*Peel \(Regional Municipality\) v Great Atlantic & Pacific Co. of Canada Ltd.*](#), 74 OR (2d) 164 (ON CA)
2. [*Bedford v Canada \(Attorney General\)*](#), 2009 ONCA 669
3. [*Trinity Western University v Law Society of Upper Canada*](#), 2014 ONSC 5541
4. [*Ontario \(Attorney General\) v Dieleman*](#), 1993 CanLII 5478 (ONSC)
5. [*Working Families Ontario v Ontario*](#), 2021 ONSC 3652

**SCHEDULE "B"
LEGISLATION**

INTERVENTION RULE 13

LEAVE TO INTERVENE AS FRIEND OF THE COURT

[13.02](#) Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02.

TOUSSAINT
Plaintiff

- and - **ATTORNEY GENERAL OF CANADA**
Defendant

Court File No. CV-20-00649404-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**FACTUM OF THE INTENDED
INTERVENERS**

WEIRFOULDS LLP
66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto ON M5K 1B7

Raj Anand (LSO# 19763L)
ranand@weirfoulds.com

Megan Mah (LSO # 70967K)
mmah@weirfoulds.com

Tel: (416) 365-1110

Fax: (416) 365-1876

Lawyers for the Moving Parties,
the Colour of Poverty/Colour of Change Network, the
Black Legal Action Centre, the South Asian Legal
Clinic of Ontario, and the Chinese and Southeast Asian
Legal Clinic

17034720.3