



Court File No. S-252688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF A STATUTORY APPEAL

Pursuant to section 40 of the
Health Professions Act, RSBC 1996, c 183

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: West Coast Legal Education and Action Fund Association ("**West Coast LEAF**" or the "**Applicant**")

To: Amy Hamm
c/o Libertas Law
341 Talbot Street
London, ON N6A 2R5
ATTN: Lisa D.S. Bilty

And to: British Columbia College of Nurses and Midwives
c/o Olthuis van Ert
1915 - 1030 West Georgia St
Vancouver, BC V6E 2Y3
ATTN: Brent Olthuis, K.C.

TAKE NOTICE that an application will be made by the Applicant to the Honourable Justice Hughes at the courthouse at 800 Smithe Street, in Vancouver, British Columbia on July 29, 2026 at 9:45 a.m. for the orders set out in Part 1 below.

The Applicant estimates that the application will take 1 hour.

[X] This matter is not within the jurisdiction of an associate judge.

PART 1: ORDERS SOUGHT

1. That West Coast Legal Education and Action Fund Association ("**West Coast LEAF**") be granted leave to intervene in this appeal proceeding.
2. That West Coast LEAF be granted leave to provide written submissions and to make oral submissions at the hearing of the appeal.
3. That the style of cause in these proceedings be amended to add West Coast LEAF as "Intervenor."
4. That no costs will be awarded for or against West Coast LEAF in respect of this application, the hearing, or the proceeding generally.
5. Such further and other relief as counsel may advise and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

A) Overview

6. The Petitioner appeals two decisions made by the College's Discipline Committee (the "**Panel**"):
 - i. Reasons for Decision on Verdict, dated March 13, 2025 (the "**Decision on Verdict**"), which held that the Petitioner committed unprofessional conduct by making discriminatory and/or derogatory statements directed at members of the transgender community, while identifying herself as a nurse or nurse educator; and
 - ii. The Panel's decision on penalty and costs, dated August 14, 2025 (the "**Penalty Decision**").

Amended Petition at paras 1-5; Decision on Verdict at para 263;
Penalty Decision at para 72.

7. The Petitioner describes herself as an advocate and writer. She has made public comments that challenge the existence and rights of transgender people, in particular transgender women.

Amended Petition at para 7; Decision on Verdict at para 260.

8. The Petitioner submits that the issues on appeal include, *inter alia*, that the Panel erred by “favouring one ‘marginalized’ group over another and demeaning women’s rights and protections contrary to ss. 15(a) and 28 of the *Charter*.” She argues that there is a “clash of rights” between cisgender women and transgender people under the *Charter*.¹ The Petitioner submits that the Panel incorrectly limited her protected s. 2(b) freedom of expression by restricting certain expressive content that the Petitioner says advocated for the equality rights of cisgender women, despite the Panel’s finding that the impugned expressive content was discriminatory and/or derogatory to transgender persons.

Amended Petition at paras 27(f), 72-84; Decision on Verdict at para 204.

9. West Coast LEAF applies to intervene in this case to assist the Court with its consideration of equality rights as part of the *Doré/Loyola* analysis. Particularly, West Coast LEAF seeks to make legal submissions about:

- i. The approach to a *Doré/Loyola* proportionality analysis, in the context of a limit imposed on expressive content protected by s. 2(b) of the *Charter*, where the limited expressive content denigrates equality rights protected under ss. 15 and/or 28 of the *Charter*;
- ii. The caution that courts should exercise in adjudicating an alleged clash of *Charter* rights under ss. 15 and/or 28, when multiple groups may be rights holders under these sections, the mere existence of which does not require administrative decision makers to adjudicate such alleged clashes; and
- iii. To the extent this Court determines a need to engage with s. 28 of the *Charter*, West Coast LEAF will argue that this Honourable Court should employ a purposive approach in its interpretation of s. 28, consistent with the living tree doctrine.

¹ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

B) The Proposed Intervenor: West Coast LEAF

10. West Coast LEAF is a BC-based, legal non-profit, with an interest and expertise in the interpretation and application of ss. 15 and 28 of the *Charter*, as well as the relationship between the *Charter's* equality and expression rights. It is well positioned to provide useful, unique, and efficient submissions on the issues before this Court.

11. Created in 1985 when s. 15 of the *Charter* came into force, West Coast LEAF is a member-based, non-profit society incorporated in BC and registered federally as a charity. West Coast LEAF's mandate is to use the law to create an equal and just society for all people who experience gender-based discrimination in BC, including cisgender women, transgender people, and other gender-diverse communities.

Affidavit #1 of M. Power ("Power #1") at paras 5-7.

12. West Coast LEAF uses a combination of litigation, law reform activities, and public legal education to advance its mandate. Its advocacy engages with the equality interests of women and gender-diverse people along intersecting axes of marginalization, including Indigeneity, race, immigration status, gender identity, disability, age, and socio-economic status.

Power #1 at paras 7-8.

13. West Coast LEAF is an experienced intervenor before the Supreme Court of Canada ("**SCC**"), BC courts, and human rights tribunals. It has offered submissions on a range of cases, including those addressing the constitutionality of laws or government action, discrimination under human rights legislation, questions of statutory interpretation, and the development of the common law.

Power #1 at paras 10-15.

14. West Coast LEAF has experience and expertise across its program areas in connection with: (a) advocating for the rights and inclusion of transgender people; (b) the substantive equality rights of transgender people under the *Charter* and human rights legislation; and (c) the relationship between equality and expression rights under the *Charter* and human rights legislation.

Power #1 at para 16.

PART 3: LEGAL BASIS

A) Test for Intervenor Status

15. This Court has inherent jurisdiction to grant intervenor status in appropriate cases and to make orders relating to intervenors' participation in a proceeding.

O'Neill v British Columbia (Minister of Health), 2025 BCSC 601 [O'Neill] at para 8 citing *Choi v Brook at the Village on False Creek Developments Corp*, 2013 BCSC 1535 at para 7.

16. To obtain intervenor status, an applicant must demonstrate either: (i) a direct interest in the outcome of a proceeding; or (ii) a public interest in a public law issue.

O'Neill at para 11, citing *Araya v Nevsun Resources Ltd*, 2017 BCCA 402 at para 10 and *Equustek Inc v. Google Inc*, 2014 BCCA 448 at paras 5-9.

17. The legal criteria that apply to intervention applications under the public interest route are:

- i. Does the proposed intervenor have a broad representative base?
- ii. Does the case legitimately engage the proposed intervenor's interests in the public law issue raised?
- iii. Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?
- iv. Does the proposed intervenor seek to expand the scope of the matter by raising issues not raised by the parties?

O'Neill at para 13, citing *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2018 BCCA 282 at para 14 and *Squamish Nation v British Columbia (Environment)*, 2019 BCCA 65 at para 13.

18. There is a "delicate balance to be struck between ensuring that a proposed intervenor adds a different perspective and avoiding the expansion of the focus of the litigation to the extent that the dispute is taken away from those involved".

O'Neill at para 15, citing *FortisBC Inc v Shaw Cablesystems Limited*, 2010 BCCA 606 at para 6.

(i) West Coast LEAF has a broad representative base

19. West Coast LEAF's structure, mandate, history of varied legal advocacy, and community involvement all serve to meet the requirement of a broad representative base.

20. As outlined above, West Coast LEAF's mandate is to use the law to create an equal and just society for all people who experience gender-based discrimination in BC, including cisgender women, transgender people, Two Spirit people, intersex people, non-binary and gender non-conforming people, and other gender-diverse people.

21. West Coast LEAF is a non-profit, member-based organization that carries out its work with the support of approximately 300 members and 11 employees. Its members are predominantly women and gender-diverse people. West Coast LEAF also engages volunteers to assist with its advocacy work, including lawyers who act as *pro bono* counsel. It has two litigation committees made up of lawyers and law professors to help guide its litigation strategies and submissions.

22. West Coast LEAF's law reform program includes community-based research and report-writing, consultations with and submissions to governments at all levels, and advocacy campaigns. Its public legal education program engages with lay audiences throughout BC, with the aim of helping people to understand and exercise their equality rights.

(ii) The public law issues raised in this case legitimately engage West Coast LEAF's interests.

23. This appeal is suitable to an intervention by a public interest intervenor because it raises questions of public law in respect of: (i) the correct approach to a *Doré/Loyola* balancing exercise between one's freedom of expression used in a manner to undercut the equality rights of a marginalized community; and (ii) the way in which courts should approach allegations of a clash of rights between communities protected by ss. 15 and/or 28 of the *Charter*. These matters are of significant public importance, with particular impacts on equity-deserving communities protected under ss. 15 and 28, including transgender and other gender-diverse persons.

24. West Coast LEAF has a legitimate interest in the case, as demonstrated by its experience with and expertise in making submissions that apply a gender equality lens to a range of legal issues, including, the constitutionality of laws or government action, discrimination under human rights legislation, questions of statutory interpretation, and the development of the common law.

25. It has made these submissions before human rights tribunals, boards of inquiry, this Honourable Court, the Court of Appeal for British Columbia, and the Supreme Court of Canada. Particularly, West Coast Leaf has intervened in various leading cases pertaining to the rights of transgender people including, *inter alia*:

- a) *English Montréal School Board et al v Attorney General of Québec et al*, SCC File No. 41231;
- b) *Hansman v Neufeld*, 2023 SCC 14;
- c) *A.B. v C.D.*, 2020 BCCA 11;
- d) *Oger v Whatcott (No. 7)*, 2019 BCHRT 58; and
- e) *Trinity Western University v The Law Society of British Columbia*, 2015 BCSC 2326; 2016 BCCA 423; and 2018 SCC 32.

Power #1 at paras 16-18.

(iii) West Coast LEAF has a distinct perspective and its submissions would assist the Court

26. West Coast LEAF takes an intersectional approach to its work, meaning that it engages with the equality interests of women and gender-diverse people along intersections of marginalization, including, Indigeneity, race, immigration status, gender identity, sexual orientation, disability, age, and socioeconomic status. It consults and collaborates with other equity-seeking groups to ensure that its work reflects the diversity of human experience.

27. Its focus will be on the broader legal issues engaged by the weighing of certain *Charter* rights in administrative decisions, as informed by the context of this case.

28. If granted leave to intervene, West Coast LEAF will make distinct and useful submissions on points of law relevant to the issues before the Court. West Coast LEAF's objective is to assist the Court by making intervenor submissions.

29. Specifically, West Coast LEAF proposes to make submissions on the following legal issues:

- i. **Submission 1:** West Coast LEAF will assist the Court with its consideration of the *Doré/Loyola* proportionality analysis. In the instant case, that analysis takes place in the context of an administrative body's balancing of its statutory objectives against limits on an individual's s. 2(b) rights, where the impugned expressive content denigrates equality rights protected under ss. 15 and/or 28 of the *Charter*. It is open to a decision-maker conducting a *Doré/Loyola* proportionality analysis to determine that the value of expressive content—which engages s. 2(b) *Charter* guarantees and values—is diminished because of the harm the expressive content may inflict on a vulnerable community. With the diminished value of the expressive content recognised, the decision-maker may, in its countervailing balancing of its statutory objectives, decide that limiting such expressive content is justified if doing so furthers *Charter* values, including by upholding equality rights and the unwritten principle of respect for minorities, while also preventing harm to vulnerable communities.
- ii. **Submission 2:** West Coast LEAF will submit that courts should exercise caution when approaching an allegation of a “clash of rights” under the *Charter*. In the context of ss. 15 and 28, multiple groups may be rights holders and, on its own, this circumstance does not require an administrative decision maker to adjudicate an alleged “clash of rights”. Particularly, the enumerated ground of sex and analogous grounds of gender identify and/or expression in s. 15 of the *Charter* offer equality protection to transgender persons and all gender-diverse people. Further, where an administrative decision-maker acts to fulfill its statutory objectives as tasked and, in doing so, limits one's *Charter* right to freedom of expression, the decision-maker may subsequently determine that the value of the expressive content is low—even if political in nature—because the content is discriminatory to individuals within a marginalized group and

concomitantly impugns the *Charter* values that undergird s. 15 equality protections and/or s. 28 protections. In making this determination, a decision maker is not required to grapple with an alleged “clash of rights” under s. 15. In any event, as in the case at bar, the making of derogatory comments or falsehoods about transgender people or gender-diverse people more broadly does not further the rights of cisgender women; and

- iii. **Submission 3:** To the extent this Court determines a need to engage with s. 28 of the *Charter*, West Coast LEAF will argue this Honourable Court should employ a purposive approach to the interpretation of s. 28, consistent with the living tree doctrine. In this context, the text “male and female persons” in s. 28 must be interpreted as protecting the gender equality interests of all people who experience gender-based discrimination. This is consistent with the Supreme Court of Canada's broad and purposive approach to *Charter* interpretation, including its recent guidance, which reminds us that the *Charter* is drafted with “an eye to the future”: *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at para 70. This interpretation is also supported by existing human rights jurisprudence, which has long recognized that discrimination against transgender and non-binary individuals falls within protections against sex-based discrimination.

(iv) West Coast LEAF's intervention would not expand the scope of this matter

30. If granted leave to intervene, West Coast LEAF will not stray beyond an intervenor's proper role:

- a) West Coast LEAF will limit its submissions to legal argument on issues raised by the parties, including the *Doré/Loyola* proportionality analysis in the context of ss. 2(b), 15, and 28 of the *Charter*. Accordingly, it will not expand the scope of issues as put forth by the parties;
- b) West Coast LEAF will closely consider the written arguments of the parties and other intervenors in order to limit duplication of submissions;

- c) West Coast LEAF will base its submissions on the record already before the Court in this appeal and will not seek to adduce fresh evidence; and
- d) West Coast LEAF takes no position on the facts of this case or the application of the law to the facts, and will take no position on the outcome of the case generally.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

PART 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Mélanie Power, made on June 25, 2026;
- 2. The Amended Petition to the Court, filed September 17, 2025;
- 3. The Amended Response to Petition, filed December 1, 2025;
- 4. The Panel's Decision on Verdict;
- 5. The Panel's Penalty Decision; and
- 6. Such further and other material as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: June 26, 2026



Counsel for West Coast LEAF

Michael D. McDonald
Preston I.A.D. Parsons

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

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.....

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Date:[dd/mmm/yyyy].....

.....
 Signature of ☐ Judge ☐ Associate Judge

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

☒ none of the above