

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,  
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN  
ACCOMMODATION**

**Applicants  
(Appellants)**

- and -

**ATTORNEY GENERAL OF CANADA and  
ATTORNEY GENERAL OF ONTARIO**

**Respondents  
(Respondents in Appeal)**

**FACTUM OF THE COALITION OF INTERVENERS  
COLOUR OF POVERTY/COLOUR OF CHANGE NETWORK  
(COPC)**

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## **PART I – COLOUR OF POVERTY/COLOUR OF CHANGE NETWORK (COPC)**

1. COPC is a community-based province-wide network of organizations and individuals who came together in 2007 to raise public awareness of issues affecting racialized communities. The constituencies represented by COPC are among the most marginalized, and are disproportionately affected by homelessness and lack of affordable housing. Since its inception, COPC has included affordable housing as a core component of its advocacy activity, and has a well-developed position on housing policy as it affects racialized communities.

2. COPC is led by a steering committee of organizational and individual members. These are: Access Alliance Multicultural Health & Community Services, African Canadian Legal Clinic, Canadian Arab Federation, Chinese Canadian National Council Toronto Chapter, Council of Agencies Serving South Asians, Hispanic Development Council, Karuna Community Services, Mennonite New Life Centre of Toronto, Metro Toronto Chinese & South East Asian Legal Clinic, Midaynta Community Services, Ontario Council of Agencies Serving Immigrants, La Passerelle-I.D.É., South Asian Legal Clinic of Ontario, Thorncliffe Neighbourhood Office, and Professor Grace-Edward Galabuzi of Ryerson University.

3. Each organizational member of the steering committee is a community-based not-for-profit organization with a long history of working with racialized communities and newcomers by providing a wide range of services in areas including health, legal, employment, housing, social and immigration settlement. Together, the COPC steering committee represents the diverse racialized communities in Ontario with a shared vision of racial justice and racial equity.

## PART II – POINTS IN ISSUE

4. COPC submits that applying a racial equality lens to the interpretation of section 15 of the *Charter* will highlight the viability of the Appellants' argument in paragraph 37 of the Application that the governments' failure to implement adequate housing constitutes adverse effects discrimination on the groups identified by the enumerated and analogous grounds.

5. COPC submits that substantive equality is a principle of fundamental justice under section 7 of the *Charter*, an approach that provides the "exceptional circumstances" that will allow section 7 to be applied outside of context of the criminal law and closely-related fields.

## PART III – LAW AND ARGUMENT

### Section 15

6. In addition to claiming that homelessness is an analogous ground under section 15, the Appellants claim that "the persons affected by homelessness and the lack of adequate housing are disproportionately members of other groups protected from discrimination under s. 15(1), including women, single mothers, persons with mental and physical disabilities, Aboriginal persons, seniors, youth, racialized persons, newcomers and persons in receipt of social assistance.

7. This "adverse effects discrimination" alleged in paragraph 37 is indirect, rather than direct: "although the law purports to treat everyone the same, it has a disproportionately negative impact on a group or individual that can be identified by factors relating to an enumerated or

analogous ground.”<sup>1</sup> This adverse impact can arise when government fails to take into account the actual situation of each group being made subject to the law<sup>2</sup>, and treats all persons in a formally equal manner. In such cases, it is essential that the Court consider each of the grounds contributing to the overall detrimental effect, so that the impact of race discrimination is not submerged or lost in the impact of other grounds.

8. The motions judge did not appreciate the pleading in paragraph 37 of the Amended Notice of Application, and did not apply to it the correct legal test. Rather, he comments:

“Taken together, these groups include virtually everybody in our society. Taking into account only “women”, “youth” and “seniors” the only groups in society not included are young and middle-aged men. What discrimination can there be when all of the groups identified as being subject to this discrimination taken together, include virtually all of us?”<sup>3</sup>

The “young and middle-aged men” in the example of the motions judge include racialized men, but he seems to be unaware of that, assuming that they are all white. He makes race invisible.

9. For race not to be invisible, the Court should consider whether the law is discriminatory from the point of view of “the reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to, and under similar circumstances as the claimant.”<sup>4</sup> This means that the Court must strive to understand essential concepts like human dignity from the vantage point of the complainant. Human dignity lies at the heart of the section 15 guarantee: “it is this section of the *Charter*, more than any other, which recognizes and

<sup>1</sup> *Québec (Attorney General) v A*, [2013] 1 SCR 61 at para 189 [A].

<sup>2</sup> *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 36 [Law].

<sup>3</sup> *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410 at paras 46, 62 and 82 at para 135 [Tanudjaja].

<sup>4</sup> *A*, *supra* note 1 at para 419, citing *Law*, *supra* note 3 at para 60. See also L’Heureux-Dubé J in *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at paras 64-67 [Corbiere], citing both *Egan v Canada*, [1995] 2 SCR 513 [Egan] and *Law*.



cherishes the innate human dignity of every individual.”<sup>5</sup> COPC emphasizes that it is especially important to those identified by race that the Court make an effort to appreciate their human dignity concerns from a vantage point akin to theirs. Seeing discrimination claims through a racial equality lens will reveal aspects of discrimination and disadvantage that are usually underappreciated or not seen at all.

10. Adopting this perspective means that the Court will review the complainants’ experience in its totality. Considering that a person may suffer discrimination not just because of one enumerated or analogous ground in section 15, but rather because of more than one ground, or because of a “confluence” of such grounds<sup>6</sup> is often referred to as recognizing the “intersectionality” of these grounds.<sup>7</sup>

11. The need to consider more than one of the enumerated or analogous grounds in section 15 is particularly relevant to racialized persons, like two of the four personal Applicants in this matter. It has been observed that a claimant’s true situation may be overlooked, and discrimination against him or her missed, as direct and overt race discrimination is becoming more rare in contemporary society (though not disappearing altogether).<sup>8</sup> If grounds other than race are analysed without taking into account the role of race in constructing, or worsening, the discrimination, the overall impact of race as a factor that attracts invidious differential treatment will be disguised, and societal efforts to address race discrimination will be given low priority, even if the offending government action is invalidated on other grounds. The result in such a case

<sup>5</sup> *Egan*, *supra* note 4 at para 584 per Cory J, para 625 per McLachlin J, and para 543 per L’Heureux-Dubé J.

<sup>6</sup> *Law*, *supra* note 2 at paras 37 and 93.

<sup>7</sup> Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims: A Discussion Paper*, 2001, at pp 3-7.

<sup>8</sup> *Ibid*, at pp 5-11.

is that society will have a diminished understanding of the role of race in perpetuating discrimination and adverse treatment.

12. It is thus particularly important to those who are identified by the ground of race that the discrimination analysis attend to the intersectionality argument, in a manner that consciously considers the discrimination experienced by racialized persons. This approach is directly relevant to Ms. Tanadjaja and Mr. Mahmood, who are characterized by race and by other grounds to which section 15 will respond. The Supreme Court of Canada is showing increasing sensitivity to the need to shape its jurisprudence so as to provide opportunities for consideration of a confluence of grounds.

13. From the outset, the crucial question in section 15 analysis is does the challenged law “violate the norm of substantive equality in s.15(1) of the Charter?”<sup>9</sup> The Court says in *Withler*, “Substantive equality, unlike formal equality, rejects the mere presence or absence of difference as an answer to differential treatment. It insists on going behind the façade of similarities and differences. It asks not only what characteristics the different treatment is predicated upon, but also whether those characteristics are relevant considerations under the circumstances. The focus of the inquiry is on the actual impact of the impugned law, taking full account of social, political, economic and historical factors concerning the group.”<sup>10</sup> The Court “in the final analysis must ask whether, having regard to all relevant contextual factors, including the nature and purpose of

<sup>9</sup> *A*, *supra* note 1 at para 325.

<sup>10</sup> *Withler v Canada (Attorney General)*, [2011] 1 SCR 396 [*Withler*].

the impugned legislation in relation to the claimant's situation, the impugned distinction discriminates by perpetuating the group's disadvantage or by stereotyping the group."<sup>11</sup>

14. The emphasis on substantive equality caused the Court in *Withler* to reject "formal comparison with a selected mirror comparator group" in favour of "an approach that looks at the full context, including the situation of the claimant group and whether the impact of the impugned law is to perpetuate disadvantage or negative stereotypes about that group."<sup>12</sup> Contrary to this ruling of the Supreme Court, the motions judge considered it to be a flaw in the Appellants' case that they did not plead a mirror comparator: "There is nothing said that demonstrates that these actions deny the homeless benefits given to others or impose on the homeless burdens that others do not have to deal with."<sup>13</sup>

15. One of the reasons for stepping away from strict adherence to the mirror comparator approach in *Withler* was the Court's concern that "... a claimant may be impacted by many interwoven grounds of discrimination. Confining the analysis to a rigid comparison between the claimant and a group that mirrors it except for one characteristic [i.e. the alleged ground of discrimination] may fail to account for the more nuanced experiences of discrimination."<sup>14</sup> The Court states that "an individual's or a group's experience of discrimination may not be discernible with reference to just one prohibited ground of discrimination, but only in reference to a conflux of factors, any one of which taken alone might not be sufficiently revelatory of how keenly the

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<sup>11</sup> *Ibid* at para 54.

<sup>12</sup> *Ibid* at para 40.

<sup>13</sup> *Tanudjuja*, *supra* note 3 at paras 107-109 and 121.

<sup>14</sup> *Withler*, *supra* note 10 at para 58.



denial of a benefit or the imposition of a burden is felt.”<sup>15</sup> This concern resonates with the circumstances invoked by the Appellants in paragraph 37 of the Application.

16. In an effort to further preserve its flexibility to consider claims based on multiple grounds of discrimination, the Court states in *Withler*: “Provided that the claimant establishes a distinction based on one or more enumerated or analogous grounds, the claim should proceed to the second step of the analysis.”<sup>16</sup> Where the distinction being relied on is indirect, “Historical or sociological disadvantage may assist in demonstrating that the law imposes a burden or denies a benefit to a claimant that is not imposed upon or denied to others. The focus will be on the effect of the law and the situation of the claimant group.”<sup>17</sup>

17. At the second stage of its section 15 analysis, determining whether a distinction amounts to discrimination, the Court conducts an inquiry focused on the actual impact of the impugned law or action.<sup>18</sup> The analysis is contextual, not formalistic, grounded in the actual situation of the group and the potential of the impugned provisions to worsen their situation.<sup>19</sup> There is no “rigid template” for the analysis but all relevant factors should be considered.<sup>20</sup> Where the discriminatory effect is said to be the perpetuation of disadvantage or prejudice, evidence that goes to establishing a claimant’s historical position of disadvantage or demonstrating existing prejudice against the claimant group, as well as the nature of the interest that is affected, will be considered. Where the claim is that a law is based on stereotyped views of the claimant group,

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<sup>15</sup> *Ibid* at para 50.

<sup>16</sup> *Ibid* at para 63.

<sup>17</sup> *Ibid* at para 64.

<sup>18</sup> *A*, *supra* note 1 at para 324, quoting *Withler*, *supra* note 10.

<sup>19</sup> *Withler*, *supra* note 10 at para 37.

<sup>20</sup> *Ibid* at para 66.



the issue will be whether there is correspondence with the claimants' actual characteristics or circumstances.<sup>21</sup>

18. The application of this approach to intersectionality is illustrated in appellate cases arising in two jurisdictions. In *Dartmouth/Halifax County Regional Housing Authority v. Sparks*<sup>22</sup>, a single black mother of two children, living in public housing on social assistance, challenged under section 15 legislation which did not provide to public housing tenants the notice period for termination of tenancy provided to tenants in private-sector housing. The Nova Scotia Court of Appeal found that the legislation made a distinction on its face against public housing tenants. On the basis of the government's admission that women, blacks and social assistance recipients form a disproportionately large percentage of tenants in public housing<sup>23</sup>, Hallett JA for a unanimous Court of Appeal concludes that "the impugned provisions amount to discrimination on the basis of race, sex, and [low] income."<sup>24</sup> He arrives at this conclusion by looking at the composition of the group of public housing tenants, linking low income with being a single mother, a senior citizen, or, as with this applicant, in "families with low incomes, a majority of whom are disadvantaged because they are female parents on social assistance, many of whom are black...."<sup>25</sup> The Court goes on to conclude that "The public housing tenants group as a whole is historically disadvantaged as a result of the combined effect of several personal characteristics listed in s.15(1). As a result, they are a group analogous to those persons or groups specifically referred to by the characteristics set out in s.15(1)...."<sup>26</sup>

<sup>21</sup> *Ibid* at para 38.

<sup>22</sup> (1993) 101 DLR (4<sup>th</sup>) 224.

<sup>23</sup> *Ibid* at page 4 of the on-line version of the case.

<sup>24</sup> *Ibid* at page 6 of the on-line version of the case.

<sup>25</sup> *Ibid* at page 7 of the on-line version of the case.

<sup>26</sup> *Ibid*.

19. In *Falkiner v. Ontario (Ministry of Community and Social Services)*<sup>27</sup>, the Court of Appeal for Ontario considered an argument that legislation treating as spouses for purposes of social welfare persons who lived together and shared expenses in a “try-on” provisional relationship violated section 15 of the *Charter*. The complainants argued that they had been subjected to differential treatment on the basis that they are “single mothers on social assistance,” a group which Laskin JA found in turn to share three relevant characteristics. They are women, they are single mothers solely responsible for the support of their children and they are social assistance recipients.<sup>28</sup> In keeping with the principle enunciated by the Chief Justice in *A*, Laskin JA took the claimants in *Falkiner* at their own estimation, saying “That is the group with which they identify themselves.”<sup>29</sup>

20. Justice Laskin identifies this group’s claim as based on “an interlocking set of personal characteristics” and states that no single comparator is sufficient to bring into focus the multiple forms of differential treatment alleged.<sup>30</sup> He satisfies himself that the complainants have established differential treatment on the basis of one enumerated and one analogous ground under section 15 of the *Charter*, namely sex and marital status.<sup>31</sup> He then proceeds to analyse whether receipt of social assistance could be considered an analogous ground under section 15, finding that it can.<sup>32</sup> In the result, he concludes that the impugned scheme imposes differential treatment on the combined grounds of sex, marital status, and receipt of social assistance.<sup>33</sup>

<sup>27</sup> (2002) 59 OR (3d) 481 (CA) [*Falkiner*].

<sup>28</sup> *Ibid* at para 70.

<sup>29</sup> *Ibid*.

<sup>30</sup> *Ibid* at para 72.

<sup>31</sup> *Ibid* at paras 73-83.

<sup>32</sup> *Ibid* at paras 85-93.

<sup>33</sup> *Ibid* at para 105.

21. The claim of the Appellants under paragraph 37 of the Amended Notice of Application is amenable to the kind of analysis done by Justice Hallett and Justice Laskin in these two cases. Although they approached the confluence of grounds in slightly different ways, the work of both Courts shows how a sensitive use of the intersectionality analysis can truly capture the experience of those who claim wrongful discrimination, and permit sophisticated analysis of the factors underlying it. In the *Halifax/Dartmouth* case, deployment of the multi-factor analysis actually led to the recognition of a new analogous ground. In *Falkiner*, recognition of a new analogous ground under section 15 was a part of the analysis, required to capture the complex causation of the discrimination alleged. These cases show that it is premature to dismiss the Appellants' claim at this stage. Either of these approaches would ensure that persons whose disadvantage arises in whole or in part because of race will have that element of their experience taken into account, and the whole person will be "seen" by the Court. It is only in this way that the Court can respect their essential human dignity. In the same fashion, all of the other enumerated or already-recognized analogous grounds can be factored into the discrimination analysis, to create a full picture of the discrimination experienced.

## Section 7

22. COPC contends that substantive equality should be considered a principle of fundamental justice within section 7 of the *Charter*. To do so would invoke the "special circumstances" that will permit section 7 to be applied outside of the criminal law context.<sup>34 35</sup>

<sup>34</sup> *New Brunswick (Minister of Health and Community Services) v G(J)*, [1993] 3 SCR 46 at paras 65-67 [G(J)]; and see observations of McLachlin CJC in *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429 at paras 77-79 at [Gosselin].

<sup>35</sup> *Gosselin*, *supra* note 34 at paras 82-83 and see *Tanudjuja*, *supra* note 3 at paras 46, 62 and 82.



23. Substantive equality already has an established role in the interpretation of section 7. The concurring reasons in *JG* state that the Supreme Court has recognized that all *Charter* rights strengthen and support one another, and observe that section 15 plays a particularly important role in that process. The interpretive lens of section 15 should therefore influence the interpretation of other constitutional rights; in particular, the principle of equality guaranteed by sections 15 and 28, is a “significant influence” on interpreting the scope of section 7.<sup>36</sup> The Court in *R.v.Mills* states that a full discussion of the principles at issue in any particular section 7 case could well implicate other *Charter* rights, such as equality.<sup>37</sup> Peter Hogg discusses numerous cases where “equality values” have influenced the interpretation of section 7 of the *Charter*.<sup>38</sup>

24. COPC submits that substantive equality also meets the test to be a principle of fundamental justice. In *G(J)*, the Chief Justice observes<sup>39</sup> that the principles of fundamental justice are to be found in the basic tenets of our legal system. A principle of fundamental justice must be a legal principle about which there is sufficient consensus among reasonable people that it is vital or fundamental to our notion of justice, and fundamental to the way our legal system ought to operate. The principle must be identified with sufficient precision to yield a manageable standard against which to measure deprivations of the life, liberty, or security of the person.<sup>40</sup>

<sup>36</sup> *G(J)*, *supra* note 34 at para 112.

<sup>37</sup> *R v Mills*, [1999] 3 SCR 668 at para 64 [*Mills*].

<sup>38</sup> Peter W. Hogg, “Equality as a Value in Charter Interpretation,” (2003) 20 SCLR (2d) 113, at 115, 117, 126-130.

<sup>39</sup> *G(J)*, *supra* note 34 at para 69, relying on *Re BC Motor Vehicles Act*, [1985] 2 SCR 486 at p 503.

<sup>40</sup> *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, [2004] 1 SCR 76 at para 8; *R v Malmo-Levine*, [2003] 3 SCR 571 at paras 112-113.



25. The *Secession Reference* identifies four foundational constitutional principles: federalism, democracy, constitutionalism and the rule of law, and respect for minority rights.<sup>41</sup> In discussing the principle of democracy, the Court in the *Secession Reference* quotes *R. v. Oakes*,<sup>42</sup>: “The Court must be guided by the values and principles essential to a free and democratic society which I believe to embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide range of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.”<sup>43</sup> The Court also states that democracy cannot exist without the rule of law,<sup>44</sup> which it had earlier described as “a fundamental postulate of our constitutional structure.”<sup>45</sup> One of the elements of the rule of law is that “the law is supreme over the acts of both government and private persons”.<sup>46</sup>

26. The Court in *Mills* observes that the balancing exercise in section 1 of the *Charter* is concerned with the values underlying a free and democratic society, which are broader than the tenets of the legal system in play in the section 7 analysis.<sup>47</sup> COPC submits that inclusion of a principle among the values of a free and democratic society should not disqualify it from being a principle of fundamental justice if it otherwise meets the requirements for identifying a fundamental principle of justice.

<sup>41</sup> *Reference Re Secession of Québec*, [1998] 2 SCR 217 at para 49 [*Secession Reference*].

<sup>42</sup> [1986] 1 SCR 103 at page 136.

<sup>43</sup> *Secession Reference*, *supra* note 41 at para 64.

<sup>44</sup> *Ibid* at para 67.

<sup>45</sup> In *Roncarelli v Duplessis*, [1959] SCR 121 at 142 and in *Secession Reference*, *supra* note 41 at para 70.

<sup>46</sup> *Secession Reference*, *supra* note 41 at para 71.

<sup>47</sup> *Mills*, *supra* note 37 at para 67.

27. Substantive equality meets all of these requirements. The principle of substantive equality has general acceptance among reasonable people, and there is significant social consensus that it is fundamental to the way in which the legal system ought fairly to operate. The rule of law requires that the government and the citizen be treated equally by and in the legal order. Acceptance of equality at that fundamental level sets a climate in the legal system that is familiar with, and responsive to, the command of equality.<sup>48</sup> The principle of substantive equality can be identified with sufficient precision to yield a manageable standard; the Supreme Court has recurrently enunciated the essentials of substantive equality within the context of section 15.

28. Concerns have been expressed lest acceptance of equality as a principle of fundamental justice may bring section 7 into conflict with section 15, or make one or the other redundant<sup>49</sup>. Stewart states that “In the absence of section 15, it might be arguable that a right to equality was a principle of fundamental justice under section 7.”<sup>50</sup> COPC submits that it is neither desirable nor necessary to take an either-or approach to the question of where in the *Charter* a guarantee of equality is to reside, or the value of equality is to do its work. It can be central to the analysis in both sections 7 and 15, and the differing requirements concerning burden of proof, and other elements of the sections, will ensure that there is no redundancy.

29. In *Republic of the Philippines v. Pacificador*<sup>51</sup> Dougherty JA states, “I have no doubt that the equality rights created by s.15 are principles of fundamental justice.”<sup>52</sup> However, the claimant

<sup>48</sup> As stated by Britain’s former senior Law Lord, “Most British people today would, I think, rightly regard equality before the law as a cornerstone of our society,” Tom Bingham, *The Rule of Law* (Penguin Books, 2010) at page 55.

<sup>49</sup> See the discussion of this point in Kerri A Froc, “Constitutional Coalescence: Substantive Equality as a Principle of Fundamental Justice,” (2010-2011) 42 *Ottawa L Rev* 411-445 at paras 47-62.

<sup>50</sup> Hamish Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms* (Irwin Law Inc 2012) at 13.

<sup>51</sup> (1993) 14 OR (3d) 321 (CA) [*Pacificador*].

in that case was advancing claims based on a comparison of the group of which he was a member with another group. Dougherty JA concludes “the constitutionality of this kind of alleged comparative inequality falls to be determined under the test established by the s.15 jurisprudence,”<sup>53</sup> COPC submits that it is appropriate to revisit this preference for analysing equality matters exclusively within section 15. First of all, it is evident that equality is being factored into the analysis of section 7 claims in cases decided since *Pacificador*. More important still, the Supreme Court has now backed away from the requirement of a mirror comparator analysis in section 15, opening the way to develop an approach to analysis under section 7 that treats substantive equality as a principle of fundamental justice.

30. Identifying equality as a fundamental principle of justice in the section 7 analysis has a bearing on the requirement of “special circumstances” as a prerequisite for the opening up of section 7 beyond the criminal law and its immediate environs. Canada has told the international community, in the context of its treaty obligations, that section 7 will protect the most vulnerable against losing the necessities of life. In the international forum Canada has stated, in effect, that it is bound by guarantees like section 7 in the context of homelessness. It cannot say, in a domestic court, that it is not so bound. The rule of law encompassed within substantive equality means at least that. Nor can a court, in applying the *Charter*, let the government deny in a domestic forum the obligations it has acknowledged before international authorities.

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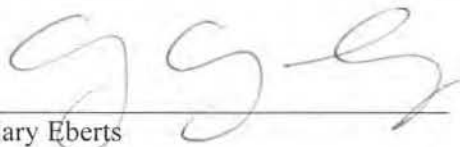
<sup>52</sup> *Ibid* at para 55.

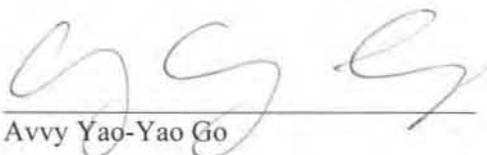
<sup>53</sup> *Ibid* at para 56.

**PART IV – NATURE OF ORDER REQUESTED**

31. COPC asks that the Court grant the appeal, and dismiss the Rule 21 motion of the Governments of Canada and Ontario. The COPC asks that no costs be ordered against it, and does not request its costs of this intervention.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15<sup>TH</sup> DAY OF APRIL, 2014**

*per*   
\_\_\_\_\_  
Mary Eberts

  
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Avvy Yao-Yao Go

Co-Counsel for the Colour of  
Poverty/Colour of Change Network



### Schedule "A" – List of Authorities

1. *Québec (Attorney General) v A*, [2013] 1 SCR 61
2. *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497
3. *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410
4. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203
5. *Egan v Canada*, [1995] 2 SCR 513
6. Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims: A Discussion Paper*, 2001
7. *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union (BCGSEU) ("Meiorin Grievance")*, [1999] 3 SCR 3
8. *Withler v Canada (Attorney General)*, [2011] 1 SCR 396
9. *Dartmouth/Halifax County Regional Housing Authority v. Sparks* (1993) 101 DLR (4<sup>th</sup>) 224
10. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002) 59 OR (3d) 481 (CA)
11. *New Brunswick (Minister of Health and Community Services) v G(J)*, [1993] 3 SCR 46
12. *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429
13. *R v Mills*, [1999] 3 SCR 668
14. Peter W. Hogg, "Equality as a Value in Charter Interpretation," (2003) 20 SCLR (2d) 113
15. *Re BC Motor Vehicles Act*, [1985] 2 SCR 486
16. *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, [2004] 1 SCR 76
17. *R v Malmö-Levine*, [2003] 3 SCR 571
18. *Reference Re Secession of Québec*, [1998] 2 SCR 217

19. *R v Oakes*, [1986] 1 SCR 103
20. *Roncarelli v Duplessis*, [1959] SCR 121
21. Tom Bingham, *The Rule of Law* (Penguin Books, 2010)
22. Kerri A Froc, "Constitutional Coalescence: Substantive Equality as a Principle of Fundamental Justice," (2010-2011) 42 Ottawa L Rev 411-445
23. Hamish Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms* (Irwin Law Inc 2012)
24. *Republic of the Philippines v. Pacificador* (1993) 14 OR (3d) 321 (CA)

**Court File No. C57714**

**TANUDJAJA et al - and- ATTORNEY GENERAL OF CANADA - and - AMNESTY INTERNATIONAL/  
et al ESCR-NET COALITION et al**

### Applicants (Appellants)

### Respondents (Respondents on Appeal)

## Interveners

**Court of Appeal for Ontario**

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