

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)

BETWEEN:

ATTORNEY GENERAL OF QUEBEC

APPELLANT
(Appellant /
Respondent by Cross-Appeal)

- and -

BIJOU CIBUABUA KANYINDA

RESPONDENT
(Respondent /
Appellant by Cross-Appeal)

- and -

COMMISSION DES DROITS DE LA PERSONNE

ET DROITS DE LA JEUNESSE

RESPONDENT
(Intervener /
Appellant by Cross-Appeal)

- and -

**ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF ONTARIO,
ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF**

CANADA

INTERVENERS

**Motion for Leave to Intervene
CHARTER COMMITTEE ON POVERTY ISSUES
(Pursuant to Rules 47 & 55 of the *Rules of the Supreme Court of Canada*)**

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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

If the motion is served and filed with the application for leave to appeal, then the Respondent may serve and file the response to the motion with the response to the application for leave to appeal.

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SCC File No. 41210

IN THE SUPREME COURT OF CANADA

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BETWEEN:

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- and -

**ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF ONTARIO,
ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF
CANADA**

INTERVENERS

**NOTICE OF MOTION FOR LEAVE TO INTERVENE
CHARTER COMMITTEE ON POVERTY ISSUES
(Pursuant to Rules 47 & 55 of the *Rules of the Supreme Court of Canada*)**

TAKE NOTICE that the Charter Committee on Poverty Issues applies to a judge under Rules 47(1) and 55 for an order for leave to intervene or any further or other order that the judge may deem appropriate;

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

1. A central question raised in this appeal is whether section 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) imposes positive obligations on governments to ameliorate systemic inequality and socio-economic disadvantage, including low-income women's disadvantage in the labour force because of their inability to afford childcare without publicly subsidized access.
2. The Charter Committee on Poverty Issues (CCPI) will provide the Court with a unique perspective and recognized expertise in considering this question. CCPI is a national committee founded in 1988, which brings together low-income representatives and experts in human rights, constitutional law and poverty law for the purpose of assisting disadvantaged groups in Canada to secure and assert their rights under the *Charter*.
3. The extent to which sections 7 and 15 of the *Charter* require positive measures by governments to establish, and to ensure that vulnerable groups have access to, programs providing for basic requirements of life, dignity and security has been a particular focus of CCPI's work. CCPI's unique expertise and distinctive interest in this issue has been recognized by courts in many previous cases, including in thirteen appeals before this Court.
4. CCPI's intervened in *Symes v. Canada*, [1993] 4 S.C.R. 695 (*Symes*) to address the issues of whether applying section 15 to socio-economic policy "overshoots" the purposes of the *Charter*, and whether section 15 imposes positive obligations on governments to ameliorate

inequality experienced by women due to their disproportionate responsibility for childcare.

CCPI also intervened in *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 (*Eldridge*) to address the question of whether section 15 obliges governments to implement programs to alleviate disadvantages that exist independently of state action – in that case, the need for a program to provide medical interpretation services for the Deaf.

5. CCPI intervened in a motion to strike and is currently intervening in an action before the Ontario Superior Court to provide assistance in considering whether section 15 imposes positive obligations on governments to ensure access to essential healthcare when life is at risk, without discrimination because of immigration status (*Toussaint v. Attorney General of Canada*, 2024 ONSC 6974, Decision of Papageorgiou J. December 12, 2024).

6. As outlined in paragraphs 8 – 16 of the Affidavit of Bonnie Morton, CCPI’s previous interventions have been of significant benefit to this Court and to other lower courts in considering the application of section 15 to socio-economic programs and to the issue of positive obligations to address socio-economic inequality. CCPI offers a unique and critical perspective in seeking to ensure that people living in poverty such as the Respondent in this case are not, in the words of McLachlin J (as she then was), rendered “constitutional castaways.” (*R. v. Prosper*, [1994] 3 S.C.R. 236 at 302).

7. Given its core mission of articulating and advancing the substantive equality rights of people living in poverty, CCPI has a real, substantial interest in the outcome of this case. CCPI’s ongoing work to secure effective protection of the *Charter* rights of those living in poverty will be directly affected by the Court’s consideration of positive obligations under section 15 in this case. CCPI has an important perspective distinct from the immediate parties and, as outlined in

paragraphs 6-19 of the Affidavit of Bonnie Morton, it is a well-recognized group with relevant policy and legal expertise.

Proposed Submissions

8. As outlined in paragraphs 20 – 30 of the Affidavit of Bonnie Morton, and having consulted with other interveners to avoid duplication, CCPI will assist the Court by expanding on the following two key points.

- i) Section 15 of the *Charter* imposes positive obligations on governments to ameliorate systemic inequality and socio-economic disadvantage and, in this case, to address women’s distinctive need for access to affordable childcare**

9. CCPI will argue that this Court should reconsider the majority’s statement, in *R. v. Sharma*, that “s. 15(1) does not impose a general, positive obligation on the state to remedy social inequalities or enact remedial legislation.” (*R. v. Sharma*, 2022 SCC 39, at [para 63](#).) CCPI will submit that this assertion ignores the legislative history of section 15 and severely undermines its promise of equal protection and benefit of the law for those facing socio-economic disadvantage, including the Respondent in this case.

10. CCPI will argue that recognizing governments’ positive obligations to remedy social inequality is central to this Court’s approach to substantive equality in previous cases such as *Eldridge* and *Vriend*. In the present case, CCPI will submit that the Court should affirm that section 15 requires legislative and programmatic measures to ameliorate the disadvantage experienced by women in the labour force because of their disproportionate responsibility for childcare.

ii) Clarifying the substantive equality comparison in this case

11. CCPI will argue that the present case is analogous to *Vriend*, in that the social inequality being addressed exists independently of the impugned legislation or program and, as in *Vriend*, the distinction is “simultaneously drawn” along two different lines, one based on formal equality and the other, “the more fundamental, one” based on substantive equality. (*Vriend* at [paras 81-82](#)).

12. As the Court explained in *Vriend*, the formal equality obligation is triggered by a government’s decision to provide a benefit, which must then be provided in a non-discriminatory manner. The relevant distinction for the formal equality analysis is between those who are provided the benefit and those with similar needs who are denied it. CCPI will acknowledge that formal equality could conceivably be satisfied by providing no access to affordable childcare for anyone, or by repealing existing ameliorative measures, described by the Court in *Schachter v Canada*, [1992] 2 S.C.R. 679, at [701-702](#) as “equal graveyards” or “equality with a vengeance.”

13. A substantive equality analysis, as noted in *Vriend*, is based on a different comparison, and does not consider state inaction or legislative silence as “neutral.” (*Vriend*, at [para 86](#)). A substantive equality analysis compares the effect of legislative silence on the group with a distinctive need for government action to the effect of that silence on those without the same need (in *Vriend*, gays and lesbians compared to heterosexuals). In the present case, the relevant substantive equality analysis considers the disproportionate effect of failing to provide access to affordable childcare on women as compared to men and more particularly on women who, like the Respondent, would be unable to secure childcare absent positive state intervention.

14. CCPI will argue that applying the proper substantive equality analysis in this case makes it clear that section 15 imposes positive obligations on governments to address systemic inequality facing women in access to work by ensuring access to affordable childcare.

15. In summary, CCPI will provide an important, unique perspective on how the distinctions at issue in this case should be considered, based on the Court's previous jurisprudence and a commitment to ensuring that people living in poverty receive the full benefit of the *Charter's* protection.

16. CCPI will take no position on the disposition of the appeal.

Dated at Halifax, Nova Scotia, this 10th day of February, 2025.

SIGNED BY



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SCC File No. 41210

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ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF
CANADA**

INTERVENERS

**AFFIDAVIT OF BONNIE MORTON, CHARTER COMMITTEE ON POVERTY
ISSUES (PROPOSED INTERVENER)**

(SWORN FEBRUARY 8, 2015)

I, Bonnie Morton, of the City of Regina in the Province of Saskatchewan, MAKE OATH AND

SAY:

1. I am the Chairperson of the Charter Committee on Poverty Issues ("CCPI") and as such, I have knowledge of the matters contained in this affidavit.

2. As a child and a young adult, I experienced many years of poverty. From 1987 until my retirement in June 2022, I co-directed the Regina Anti-Poverty Ministry (previously the Downtown Chaplaincy), a social justice ministry of The United Church of Canada. I have been awarded an Honorary Doctor of Divinity by University of Saskatchewan's St. Andrew's College and I am an ordained Minister of the United Church of Canada. I have been a member of the Charter Committee on Poverty Issues since it was formed in 1988.

3. CCPI seeks leave to intervene pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*, SOR/2002-156 ("the Rules") for an order granting:

- (a) leave to intervene in the above-listed appeal;
- (b) leave to file a factum in accordance with Rules 37 and 42 of the Rules;
- (c) leave to make brief oral argument at the hearing of the above-listed appeal;
- (d) no order as to costs; and
- (e) such further and other order as the said Judge may deem appropriate.

4. CCPI proposes to focus on a critical issue raised in this appeal, on which it has a particular expertise, that is whether section 15 of the *Charter* imposes positive obligations on governments to ameliorate systemic inequality and socio-economic disadvantage, including women's disadvantage in the labour force because of their disproportionate childcare responsibilities.

5. CCPI has consistently urged this and other courts in Canada to interpret and apply the *Charter* in a manner that does not exclude or devalue the rights of those living in poverty. CCPI has argued that, for people living in poverty, access to social programs underpins their very *Charter* rights to life, liberty, security of the person and equality. In the present case, CCPI's litigation perspective and experience will be of real assistance to this Court in considering whether section 15 may impose positive government obligations to ensure access to affordable childcare in order to ensure equal benefit of the law without discrimination because of sex, particularly for women such as the Respondent, who are most socio-economically marginalized.

Description of CCPI

6. CCPI is a national committee founded in 1988 which brings together low-income representatives and experts in human rights, constitutional law and poverty law for the purpose of assisting disadvantaged groups in Canada to secure and assert their rights under the *Charter*, as well as under international human rights law, human rights legislation and other laws in Canada. CCPI has initiated and intervened in a significant number of cases at various levels of court to ensure that issues of socio-economic disadvantage, and the perspectives of persons living in poverty, are effectively presented before courts and tribunals, with high quality legal submissions, and based on reliable evidence rather than stereotype.

7. CCPI's activities include research and consultation with other organizations and members of marginalized and vulnerable groups, test case litigation, judicial and public education, appearances before United Nations and other international bodies, and collaboration with non-governmental organizations and researchers in Canada and other countries. CCPI consults with

people living in poverty and members of vulnerable groups, as well as experts across Canada and internationally, in developing its positions on issues to be addressed in its interventions or litigation. The extent to which sections 7 and 15 of the *Charter* may require positive measures by governments to ensure that vulnerable groups have access to programs providing for basic requirements of life, dignity and security, and the role of international human rights in interpreting the scope of *Charter* guarantees, has been a particular focus of CCPI's work.

CCPI's previous interventions

8. CCPI has been granted intervener status in 13 cases at the Supreme Court of Canada. These include: *Symes v. Canada*, [1993] 4 S.C.R. 695 (*Symes*); *R. v. Prosper*, [1994] 3 S.C.R. 236; *R. v. Matheson* [1994] 3 S.C.R. 328; *Walker v. Prince Edward Island*, [1995] 2 S.C.R. 407; *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 (*Eldridge*); *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (*Baker*); *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 (*G.(J)*); *Lovelace v. Ontario*, [2000] 1 S.C.R. 950 (*Lovelace*); *Gosselin v. Québec (Attorney General)*, [2002] 4 S.C.R. 429 (*Gosselin*); *R. v. Wu*, [2003] 3 S.C.R. 530; *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791; and *R. v. Caron*, [2011] 1 S.C.R. 78.

9. In all of these interventions, CCPI has emphasized the importance of interpreting *Charter* rights to ensure their full benefit and protection for those experiencing poverty or socio-economic disadvantage, not only in circumstances where the *Charter* may impose restraints on government action, but also in cases such as the present one where the equal enjoyment of

Charter rights requires the existence of and access to government programs or benefits to address systemic inequality and socio-economic deprivation.

10. In *Symes*, CCPI was granted leave to intervene and expressed its concern about the Federal Court of Appeal's opinion that applying section 15 to socio-economic policy or taxation measures “overshoots” and “trivializes” the purposes of the *Charter* as well as its ruling that section 15(1) imposes no positive obligations on governments to ameliorate inequality experienced by women due to their disproportionate responsibility for childcare.

(*Symes v. Canada (C.A.)*, 1991 CanLII 13553 (FCA), [1991] 3 FC 507 at 529-530). CCPI argued that socio-economic programs and policies must be subject to review for compliance with section 15, and that section 15 includes positive obligations on governments to ensure the equal benefit of socio-economic laws and policy for members of protected groups, including measures to address women’s differential need for childcare to facilitate equality in access to paid work. Writing for the Court, Iacobucci J agreed that socio-economic policy or legislation is subject to *Charter* review, and that deference to the legislature in policy matters is an issue to be addressed under section 1. But Iacobucci J left unresolved the question of whether the government has a positive obligation to account for the social costs of childcare, finding that this was beyond the limits of the appeal in that case. (*Symes*, at pp 753 and 765).

11. Also directly relevant to this case, is CCPI’s intervention in *Eldridge*, in which CCPI argued that section 15 may impose positive obligations on governments to address the needs of disadvantaged groups that are not caused by government action and, in that case, required the province to fund medical interpretation services for the Deaf in order to ensure they had equal

access to publicly funded health and hospital care. The unanimous Court agreed, ruling that the Respondent's assertion that governments may "provide benefits to the general population without ensuring that disadvantaged members of society have the resources to take full advantage of those benefits" is a "thin and impoverished" version of section 15 that is "belied by the thrust of this Court's equality jurisprudence." (*Eldridge*, at paras 72-73).

12. Other CCPI interventions before the Supreme Court of Canada of relevance to this case include:

- i) *Gosselin*, in which CCPI argued that sections 7 and 15 of the *Charter* should be read together as placing positive obligations on governments to provide those in need with an adequate level of income assistance, as required by international human rights treaties ratified by Canada;
- ii) *Lovelace*, in which CCPI argued that subsections 15(1) and 15(2) of the *Charter* are both intended to ensure that governments take positive steps to remedy the effects of discrimination and ameliorate the conditions of disadvantaged groups, in order for substantive equality to be realized;
- iii) *Baker*, in which CCPI argued that statutory discretion must be exercised consistently with section 15 of the *Charter* and with Canada's international human rights obligations,

requiring that governments ameliorate socio-economic disadvantage experienced by protected groups, including women with children.

- iv) *G.(J)*, in which CCPI argued that section 7 of the *Charter* may require positive measures to ensure access to justice, including through the provision of publicly funded legal aid, in that case to a sole support mother reliant on income assistance.

13. Through these interventions and other work, CCPI has played a critical role in advocating for interpretations of the *Charter*, and judicial recognition, that the equal benefit of *Charter* guarantees for socio-economically disadvantaged groups may require governments to adopt positive measures to ameliorate disadvantage, consistent with Canada's international human rights obligations.

14. CCPI has also intervened in lower court cases addressing the issues before the Court in this case. In *Tanudjaja v. Canada (Attorney General)*, 2013 ONSC 1878, CCPI was granted leave to intervene in the Ontario Superior Court's consideration of a motion to strike, brought by the Attorneys General of Canada and Ontario. In that case, CCPI addressed the question of whether sections 7 and 15 impose positive obligations on governments to address homelessness where its effects engage rights to life and security of the person and have a disproportionately adverse impact on protected groups.

15. CCPI was subsequently granted leave by the Ontario Court of Appeal (*Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 (*Tanudjaja CA*), to challenge the Superior Court's finding that the *Charter* does not impose positive obligations to address socio-economic

deprivation, such as homelessness. The majority of the Ontario Court of Appeal granted the motion to strike, finding the claim to be non-justiciable because it failed to identify a particular legislative provision or government action. But the Court of Appeal left open the question of “the extent to which positive obligations may be imposed on government to remedy violations of the *Charter*.” (*Tanudjaja CA*, at [para 37](#)).

16. CCPI was granted intervener status in the Motion to Strike in *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747, to assist the court in considering whether governments may have positive obligations under sections 7 and 15 to ensure access to essential health care without discrimination on the ground of immigration status, and whether Canada’s failure to implement a UN Human Rights Committee decision, requiring Canada to adopt such measures, violates sections 7 and 15 of the *Charter*. (*Toussaint v Canada CCPR/C/123/D/2348/2014 (30 August 2018)* at [para 11.8](#) and [para 13](#). After the Motion to Strike was dismissed, CCPI was granted leave to intervene in the continued action in the case, to address the same critical issues considered in the Motion to Strike. (*Toussaint v. Attorney General of Canada*, 2024 ONSC 6974, Decision of Papageorgiou J. December 12, 2024).

17. CCPI’s role in advancing interpretations and applications of the *Charter* that properly consider the perspective and rights of socio-economically disadvantaged groups and are informed by the values of international human rights law has been widely recognized both in Canada and internationally. The National Judicial Institute has made use of CCPI’s expertise in this area on several occasions, to provide social context education to judges from six different provinces. Internationally, CCPI’s expertise has been relied upon by the International

Commission of Jurists, Forum Asia, the Constitutional Assembly of South Africa, and the Committee for the Administration of Justice in Northern Ireland, among others. CCPI has made frequent submissions to governmental and other bodies in Canada with respect to the protection of the rights of low-income people lacking access to adequate housing under domestic and international law.

18. CCPI was a research partner in two multi-year research projects with five universities and four non-governmental organizations on “Social Rights Accountability” and “Social Rights Practice” in Canada, funded through the Social Science and Humanities Research Council’s Community-University Research Alliance program. Important components of this research included research into women’s substantive equality and positive obligations under section 15 of the *Charter*.

19. CCPI has played an important role, in Canada and internationally, in promoting a better integration of international human rights norms in domestic law and in promoting the implementation of views and recommendations from UN human rights bodies. In all of these submissions, CCPI has focused on the importance of the *Charter*, and particularly sections 7 and 15, in implementing Canada’s international human rights treaty obligations to provide effective legal remedies to violations of the rights of disadvantaged Canadians.

Proposed Submissions

20. This Court’s approach and answer to the question of positive obligations under section 15 to ameliorate the systemic disadvantage faced by women in the workforce when denied access to

affordable childcare, will have immense implications for the constitutional rights of many of the most disadvantaged individuals and groups in Canadian society, whose perspective CCPI represents.

21. CCPI has a real, substantial and identifiable interest in these issues and will be directly affected by the outcome of Court's decision in its ongoing advocacy for recognition of the equal rights of persons living in poverty or dealing with other forms of systemic disadvantage. CCPI has an important perspective distinct from the immediate parties and it is a well-recognized group with relevant policy and legal expertise.

22. Drawing on the expertise and interests of CCPI, and consulting with other interveners to avoid duplication, CCPI will assist the court by expanding on the following two key points.

- i) **Recognizing that section 15 of the *Charter* imposes positive obligations on governments to ameliorate systemic inequality and socio-economic disadvantage and, in this case, to address women's distinctive need for access to affordable childcare**

23. CCPI will argue that this Court should reconsider the majority's decision, in *R. v. Sharma*, to circumscribe the scope of section 15 "by pre-emptively foreclosing the possibility of general, positive obligations on the state to remedy social inequalities or enact remedial legislation..." (*R. v. Sharma*, 2022 SCC 39 (CanLII), at [para 205](#).) CCPI will submit that this ruling ignores the legislative history of section 15 and severely undermines its promise of equal protection and benefit of the law for those facing socio-economic disadvantage, including the Respondent in this case.

24. CCPI will argue that recognizing governments' positive obligations to remedy social inequality is central to this Court's approach to substantive equality in previous cases such as *Eldridge* and *Vriend*. In this case, CCPI will submit that the Court should affirm that section 15 requires legislation and programmatic measures to ameliorate the disadvantage experienced by women in the labour force because of their disproportionate responsibility for childcare, such that a denial of access to such programs may violate section 15 on the ground of sex.

ii) Clarifying the substantive equality comparison in this case

25. CCPI will argue that the present case is analogous to *Vriend*, in that the systemic inequality being addressed exists independently of the legislation or program at issue. In both cases, the benefit of the legislation or regulation at issue is one which would ameliorate inequality by addressing the distinctive needs of a group that is guaranteed the equal benefit of the law under section 15. In *Vriend*, the issue was the need for legislative protection from discrimination in order to ensure equal access to work. In the present case, the issue is the need for access to affordable childcare in order to attain equal access to work.

26. This Court explained in *Vriend* that, in such cases, the distinction is "simultaneously drawn" along two different lines, one based on formal equality and the other, "the more fundamental, one" based on substantive equality. (*Vriend* at paras 81-82). The formal equality comparison is between those who are provided with the legislative benefit in question and those with a similar need for the benefit, but who are denied it. As Cory J explained, "Gays and lesbians do not even have formal equality with reference to other protected groups, since those

other groups are explicitly included and they are not.” (*Vriend* at para 81.) In the present case, the parallel formal equality comparison is between women who are provided with access to subsidized childcare and women with similar needs who are denied access to this benefit.

27. This Court went on to explain in *Vriend*, that the more fundamental, substantive equality comparison, is between those who require the government to address their distinctive needs and those who do not. The Court explained that “the exclusion of the ground of sexual orientation, considered in the context of the social reality of discrimination against gays and lesbians, clearly has a disproportionate impact on them as opposed to heterosexuals.” (*Vriend*, at para 82).

28. CCPI will acknowledge that, in the present case, section 15’s obligation of formal equality might be satisfied by governments that make no effort at all to ameliorate the disadvantage faced by women in the workforce, or by repealing existing ameliorative measures, described by the Court in *Schachter v Canada*, [1992] 2 S.C.R. 679, at 701-702 as “equal graveyards” or “equality with a vengeance.” However, CCPI will submit that substantive equality requires positive measures to ameliorate disadvantage and cannot be satisfied by doing nothing. In the present case, providing no access to subsidized childcare for any women would not alter the substantively discriminatory effect of a failure to provide that benefit to one group of women. CCPI will argue that in either case, the failure to provide a benefit that is necessary for women’s equality in the workforce would violate the right to substantive equality under section 15. Recognizing positive obligations to address systemic inequality and socio-economic disadvantage experienced by protected groups under section 15 is therefore critical to this Court’s recognition of the right to substantive equality under section 15.

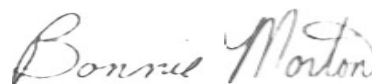
29. CCPI will rely on the submissions of other interveners on the need for this Court to reaffirm an intersectional approach to the *Charter*'s equality guarantee, to interpret section 15 in accordance with similar provisions in international human rights law, and to recognize immigration status as a prohibited ground of discrimination under section 15.
30. CCPI will take no position on the outcome of the appeal.
31. CCPI will not seek costs and will request that no costs be awarded against it.
32. This affidavit is made in support of a motion by the Charter Committee on Poverty Issues for leave to intervene.

AFFIRMED REMOTELY by Bonnie Morton at the City of Regina, in the Province of Saskatchewan, before me by videoconference in the City of Ottawa, in the Province of Ontario on February 8, 2025, in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely

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Commissioner for Taking Affidavits
Martha Jackman
LSO # 31426C



Bonnie Morton