

IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE *COURT OF APPEAL FOR QUÉBEC*)

BETWEEN:

PROCUREUR GÉNÉRAL DU QUÉBEC

Applicants  
(Appellants)

and

BIJOU CIBUABUA KANYINDA, ET AL.

Respondent  
(Respondents)

and

PROCUREUR GÉNÉRAL DE L'ALBERTA, PROCUREUR GÉNÉRAL DE L'ONTARIO  
PROCUREUR GÉNÉRAL DE LA COLOMBIE-BRITANNIQUE  
PROCUREUR GÉNÉRAL DU CANADA

Interveners

and

ESCR-NET – INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS

Proposed Intervener

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**MOTION FOR INTERVENTION OF ESCR-NET – INTERNATIONAL NETWORK FOR  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

(Pursuant to Rules 55, 56, 57 and 59 of the *Rules of the Supreme Court of Canada*)

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**OLTHUIS VAN ERT**

66 Lisgar St.  
Ottawa, ON K2P 0C1

**Gib van Ert  
Neil Abraham**

Tel: 613-501-5350  
Fax: 613-651-0304  
Email: [nabraham@ovcounsel.com](mailto:nabraham@ovcounsel.com)

**Counsel for the Proposed Intervener,  
ESCR-Net, International Network for  
Economic Social and Cultural Rights**

**ORIGINAL TO:**

THE REGISTRAR  
Supreme Court of Canada  
301 Wellington Street  
Ottawa, ON K0A 0J1

**COPIES TO:**

**M<sup>e</sup> Manuel Klein**  
**M<sup>e</sup> Luc-Vincent Gendron-Bouchard**  
**Bernard, Roy (Justice-Québec)**  
Bureau 8.00  
1, rue Notre-Dame Est  
Montréal (Québec) H2Y 1B6

Tél.: 514 393-2336, poste 51560  
(M<sup>e</sup> Klein)

Tél.: 514 393-2336, poste 51996  
(M<sup>e</sup> Gendron-Bouchard)

Télé.: 514 873-7074  
[manuel.klein@justice.gouv.qc.ca](mailto:manuel.klein@justice.gouv.qc.ca)  
[luc-vincent.gendron-bouchard@justice.gouv.qc.ca](mailto:luc-vincent.gendron-bouchard@justice.gouv.qc.ca)

**M<sup>e</sup> Christophe Achdjian**  
**M<sup>e</sup> Amélie Pelletier Desrosier** Ministère de  
**la justice**  
4<sup>e</sup> étage  
1200, route de l'Église  
Québec (Québec)  
G1V 4X1

Tél.: 418 643-1477, poste 20732  
(M<sup>e</sup> Achdjian)

Tél.: 418 643-1477, poste 21006  
(M<sup>e</sup> Pelletier Desrosier)

Télé.: 418 644-7030  
[christophe.achdjian@justice.gouv.qc.ca](mailto:christophe.achdjian@justice.gouv.qc.ca)  
[amelie.pelletier-desrosiers@justice.gouv.qc.ca](mailto:amelie.pelletier-desrosiers@justice.gouv.qc.ca)

**Counsel for the Appellant, Attorney General  
of Québec**

**M<sup>e</sup> Pierre Landry Noël et Associés**  
225, montée Paiement  
Gatineau (Québec) J8P 6M7

Tél.: 819 771-7393  
Télé.: 819 771-5397  
[p.landry@noelassocies.com](mailto:p.landry@noelassocies.com)

**Agent for the Appellant, Attorney General  
of Québec**

**M<sup>e</sup> Sibel Ataogul**  
**M<sup>e</sup> Guillaume Grenier MMGC**  
Bureau 300  
1717, boul. René-Lévesque Est Montréal  
(Québec)  
H2L 4T3  
Tél.: 514 525-3414  
Télec.: 514 525-2803  
[sataogul@mmgc.quebec](mailto:sataogul@mmgc.quebec)  
[ggrenier@mmgc.quebec](mailto:ggrenier@mmgc.quebec)

**Counsel for the Respondent, Bijou  
Cibuabua Kanyinda**

**M<sup>e</sup> Christine Campbell**  
**CDPDJ (Bitzakidis Clément-Major  
Fournier)**  
2<sup>e</sup> étage  
360, rue Saint-Jacques Montréal (Québec)  
H2Y 1P5

Tél.: 514 873-5146, poste 8384  
Télec.: 514 873-6032  
[christine.campbell@cdpdj.qc.ca](mailto:christine.campbell@cdpdj.qc.ca)

**Counsel for the intervener, Commission  
des droits de la personne et des droits de la  
jeunesse**

**M<sup>e</sup> Leah M. McDaniel**  
**Alberta Justice Constitutional and  
Aboriginal Law**  
10<sup>th</sup> Floor  
10025-102A Avenue N.W.  
Edmonton, Alberta  
T5J 2Z2

Tél.: 780 422-7145  
Télec.: 780 643-0852  
[leah.mcdaniel@gov.ab.ca](mailto:leah.mcdaniel@gov.ab.ca)

**Counsel for the intervener, Attorney  
General of Alberta**

**D. Lynne Watt**  
**Gowling WLG (Canada) LLP**  
160 Elgin Street  
Suite 2600  
Ottawa, Ontario  
K1P 1C3

Tél.: 613 786-8695  
Télec.: 613 788-3509  
[lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

**Agent for the intervener, Attorney General  
of Alberta**

**M<sup>e</sup> Rochelle Fox**  
**Attorney General of Ontario**  
4<sup>th</sup> Floor  
720 Bay Street  
Toronto, Ontario  
M7A 2S9

Tél.: 416 995-3288  
Télé.: 416 326-4015  
[rochelle.fox@ontario.ca](mailto:rochelle.fox@ontario.ca)

**Counsel for the intervener, Attorney  
General of Ontario**

**M<sup>e</sup> Marie-France Major**  
**Supreme Advocacy LLP**  
Suite 100  
340 Gilmour Street  
Ottawa, Ontario  
K2P 0R3

Tél.: 613 695-8855  
Télé.: 613 695-8580  
[mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for the intervener, Attorney General  
of Ontario**

**M<sup>e</sup> Ashley A. Caron**  
**Attorney General of British Columbia**  
PO Box 9280 Stn Prov Govt  
Victoria, Colombie-Britannique  
V8W 9J7

Tél.: 778 974-3342  
Télé.: 250 356-9154  
[ashley.caron@gov.bc.ca](mailto:ashley.caron@gov.bc.ca)

**Counsel for the intervener, Attorney  
General of British Columbia**

**M<sup>e</sup> Michael Sobkin**  
**Michael Sobkin Law Corporation**  
331 Somerset Street West  
Ottawa, Ontario  
K2P 0J8

Tél.: 613 282-1712  
Télé.: 613 228-2896  
[msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

**Agent for the intervener, Attorney General  
of British Columbia**

**M<sup>e</sup> François Joyal Me Justine Malone**  
**M<sup>e</sup> Lindy Rouillard-Labbé Procureur  
général du Canada**  
5<sup>e</sup> étage  
200, boul. René-Lévesque Ouest  
Montréal (Québec)  
H2Z 1X4

Tél.: 514 283-4934  
Télé.: 514 496-7876  
[francois.joyal@justice.gc.ca](mailto:francois.joyal@justice.gc.ca)  
[justine.malone@justice.gc.ca](mailto:justine.malone@justice.gc.ca) [lindy.rouillard-labbe@justice.gc.ca](mailto:lindy.rouillard-labbe@justice.gc.ca)

**Counsel for the intervener, Attorney  
General of Canada**

**M<sup>e</sup> Christopher Rupar**  
**Attorney General of Canada**  
Suite 500  
50 O'Connor Street  
Ottawa, Ontario  
K1A 0H8

Tél.: 613 786-0211  
Télé.: 613 954-1920  
[christopher.rupar@justice.gc.ca](mailto:christopher.rupar@justice.gc.ca)

**Agent for the intervener, Attorney General  
of Canada**

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BETWEEN:

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**NOTICE OF MOTION FOR INTERVENTION OF ESCR-NET – INTERNATIONAL  
NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS**  
(Pursuant to Rule 57 of the *Rules of the Supreme Court of Canada*)

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TAKE NOTICE that ESCR-Net - International Network for Economic, Social and Cultural Rights (“**ESCR-Net**”) applies to the Court, under Rules 55, 56, 57, and 59 of the *Rules of the Supreme Court of Canada*, for an order:

- a) granting ESCR-Net leave to intervene in this appeal,

- b) permitting the filing of a written argument not to exceed 10 pages, and
- c) permitting ESCR-Net to present oral argument

or any further or other order that the Court may deem appropriate.

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

1. ESCR-Net is a collaborative initiative of groups and individuals from around the world working to secure human rights, with a particular focus on economic, social and cultural rights (“ESCR”). Registered in the United States, ESCR-Net has over 230 organizational members and some 50 individual advocates across more than 75 countries, including Canada. Many of its members work on women’s rights to just and favourable conditions of work and migrants’ rights.
2. ESCR-Net has worked extensively on issues related to human rights, including women’s right to equality and non-discrimination as guaranteed in various international human rights treaties to which Canada is a party.
3. ESCR-Net has conducted extensive research and advocacy on the adjudication of ESCR, including the right to non-discrimination, in a range of legal and domestic contexts. This work was particularly important to ESCR-Net’s support of the work of a global nongovernmental organization (“NGO”) coalition formed to promote a complaints procedure for ESCR that was adopted on 10 December 2008 by the United Nations (“UN”) General Assembly.
4. In the context of ongoing discussions of ESCR within the UN, members and staff of ESCR-Net have frequently engaged with delegates of member states of the UN and attended expert meetings to consider and address concerns about the proper role of courts and legislatures in the

adjudication, remedy, and enforcement of ESCR-related human rights obligations, as well as the design of effective remedies within different legal systems.

5. ESCR-Net played a core role in the publication of *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary*, a publication with Pretoria University Law Press (2016) and a 2017 research volume published by Cambridge University Press concerning access to justice and enforcement for ESCR entitled, *Social Rights Judgments and the Politics of Compliance*.<sup>1</sup>

6. ESCR-Net has had extensive involvement with UN human rights treaty monitoring bodies in clarifying states' obligations under international human rights treaties. In 2023, ESCR-Net prepared and made a submission to the Inter-American Court of Human Rights in response to Argentina's request for an advisory opinion on its obligations under the right to care as derivable from Article 26 (on progressive development of ESCR) of the American Convention on Human Rights (7 November 2023). ESCR-Net's submissions included analysis of the extent to which the rights to care, equality, and non-discrimination impose an obligation on states to take necessary measures to ensure access to childcare to secure just and favourable conditions of work for women.

7. ESCR-Net's strategic litigation efforts support member organizations and others in advancing cases related to human rights under domestic, regional, and international law. ESCR-Net has convened meetings of advocates and researchers in a number of regions. By facilitating the exchange of information among its members about important cases in different jurisdictions, ESCR-Net has sought to ensure that this rapidly developing area is informed by high quality

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<sup>1</sup> M. Langford et al., eds., *Social Rights Judgments and the Politics of Compliance: Making It Stick* (Cambridge: Cambridge UP, 2017).



collaborative research and creative thinking. The Strategic Litigation Working Group facilitates spaces for exchange and mutual learning among human rights groups, as well as in dialogue with governmental and intergovernmental bodies. ESCR-Net plays a leadership role in advancing the substantive legal interpretation of state obligations with respect to ESCR, including the right to equality and non-discrimination. ESCR-Net maintains a database of international jurisprudence on ESCR and related issues.

8. In cases involving women's socio-economic rights and the right to equality, the Strategic Litigation Working Group works in collaboration with ESCR-Net's Working Group on Women and Economic, Social and Cultural Rights, which unites grassroots organizations and legal advocates in the aim of challenging systemic gender inequalities and intersecting forms of oppression, such as those based on race, migration status and nationality. Through collective action, research, advocacy, and capacity-building, the Working Group on Women and Economic, Social and Cultural Rights addresses issues like economic discrimination, access to social programs, and the right to equal access to work and social protections, amplifying the voices of women and marginalized communities to ensure their rights are recognized and upheld.

9. In Canada, ESCR-Net has intervened before the Ontario Superior Court and the Ontario Court of Appeal in human rights cases including claims for relief under s. 15 of the *Charter*. ESCR-Net has also coordinated interventions in proceedings in other jurisdictions, including before the Supreme Court of Justice of the Nation of Mexico, the Constitutional Court of Serbia, the High Court of South Africa, and the Constitutional Court of Ecuador. It has also participated in proceedings before the UN Human Right Committee and addressed the issue of Canada's obligations to provide access to essential health care to excluded protected groups.

10. If granted leave to intervene, ESCR-Net will bring a useful and different perspective to the issues raised in this appeal, particularly on the question of when s. 15 of the *Charter* may oblige the state to introduce measures to address systemic inequality, including socio-economic deprivation, and how Canada's obligations under international instruments to which it is party shed light on s. 15's interpretation and application. ESCR-Net will not introduce new facts or evidence or expand the issues beyond those identified by the appellant and respondent. It will coordinate with other interveners to avoid duplicating submissions.

11. The appellant submits that s. 15 never requires the state to provide certain groups with corrective access to categories of benefits, referring to paragraphs 62-65 of *R. v. Sharma*, 2022 SCC 39. In the appellant's view, s. 15 can never impose positive obligations on the government to address discrimination, however entrenched and oppressive. If granted leave to intervene, ESCR-Net will argue that to categorically foreclose the possibility that s. 15 might impose obligations on a state is an incorrect interpretation of the right to equality.

12. To begin with, that narrow interpretation is inconsistent with this Court's reasoning in such cases as *Vriend v. Alberta*, [1998] 1 SCR 493, *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624, *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, and *Fraser v. Canada (Attorney General)*, 2020 SCC 28.

13. That narrow interpretation is also inconsistent with the promise of substantive equality that animates s. 15. This Court has recognized that "discrimination is frequently a product of continuing to do things the way they have always been done" and that, accordingly, "governments must be

particularly vigilant about the effects of their own policies on members of disadvantaged groups”.<sup>2</sup> Therefore, government decisions that reinforce or perpetuate “the way [things] have always been done” could plausibly be discriminatory. In other words, a government’s decision to stand back and do nothing or only do a bare minimum could in some circumstances yield adverse impacts on protected groups because they reinforce or perpetuate existing systems of inequality. This is an affront to substantive inequality. It follows that such omissions could be suspect under s. 15.

14. Where a claim of discrimination is premised on a government’s decision not to take action to correct systemic inequality, a reviewing court ought to be equipped to consider whether that omission reinforces or perpetuates the disadvantage borne by those burdened by unequal systems. Otherwise, s. 15 will be largely unhelpful to claimants who face discrimination not because they have been singled out and targeted, but because the law reinforces or perpetuates existing systems of differential treatment. A government decision that yields differential treatment because it applies to different individuals operating in unequal systems is not neutral—such a law cements the *status quo* and that cementing plausibly constitutes reinforcement or perpetuation of disadvantage.

15. If granted leave to intervene, ESCR-Net will also submit that an interpretation of s. 15 that precludes claims based on government omissions is potentially inconsistent with Canada’s obligations under international human rights instruments to which it is party. In *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, this Court explained the role for international

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<sup>2</sup> *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at para. 31, citing F. Faraday, “One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada” (2020), 94 *S.C.L.R.* (2d) 301, at 310; S. Moreau, “The Moral Seriousness of Indirect Discrimination”, in H. Collins and T. Khaitan, eds., *Foundations of Indirect Discrimination Law* (Oxford: Hart Publishing, 2018), at 145.

law in interpreting *Charter* rights as one of supporting or confirming an interpretation arrived at through the *Big M Drug Mart* approach. This Court also affirmed Dickson C.J.'s guidance in *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 that the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.

16. Applying the 9147-0732 *Québec* methodology, ESCR-Net will demonstrate how Canada's binding treaty obligations, particularly under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), support and confirm an interpretation of s. 15 that does not close the door to recognition that governments will in certain circumstances be required to take steps to ensure access to assistance or other corrective benefits that address sex-based systemic inequality.

17. Further, ESCR-Net will explain why the underinclusive provision of affordable childcare constitutes an omission inconsistent with the right to equality for women in the enjoyment of the right to work as articulated in Canada's binding treaty obligations. ESCR-Net will also explain how the United Nations treaty bodies charged with monitoring compliance with states' obligations under the ICESCR and CEDAW have understood states' obligations to provide affordable childcare. In making this part of the submission, ESCR-Net will bear in mind this Court's holding, in 9147-0732 *Québec*, that the views of UN treaty bodies are non-binding sources that do not attract the presumption of conformity but instead have persuasive value in *Charter* interpretation.

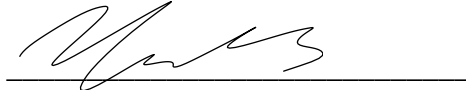
18. ESCR-Net seeks no costs and asks that no costs be awarded against it.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such motion:

1. Affidavit of Fernando Delgado made 10 February 2025.

Dated at Ottawa, Ontario this 10th day of February 2025.

Signed by



Gib van Ert | Neil Abraham

**OLTHUIS VAN ERT**

66 Lisgar St.  
Ottawa, ON K2P 0C1

**Gib van Ert**  
**Neil Abraham**

Tel: 613-501-5350  
Fax: +1-613-651-0304  
Email: [nabraham@ovcounsel.com](mailto:nabraham@ovcounsel.com)

**Counsel for the Proposed Intervener,  
ESCR-Net, International Network for  
Economic, Social, and Cultural Rights**

**ORIGINAL TO:**

**THE REGISTRAR**

Supreme Court of Canada  
301 Wellington Street  
Ottawa, ON K0A 0J1

**COPIES TO:**

**M<sup>c</sup> Manuel Klein**  
**M<sup>c</sup> Luc-Vincent Gendron-Bouchard**  
**Bernard, Roy (Justice-Québec)**  
Bureau 8.00  
1, rue Notre-Dame Est  
Montréal (Québec) H2Y 1B6

Tél.: 514 393-2336, poste 51560  
(M<sup>c</sup> Klein)  
Tél.: 514 393-2336, poste 51996  
(M<sup>c</sup> Gendron-Bouchard)  
Télé.: 514 873-7074

**M<sup>c</sup> Pierre Landry Noël et Associés**  
225, montée Paiement  
Gatineau (Québec) J8P 6M7

Tél. : 819 771-7393  
Télé.: 819 771-5397  
[p.landry@noelassocies.com](mailto:p.landry@noelassocies.com)

**Agent for the Appellant, Attorney General of  
Québec**

[manuel.klein@justice.gouv.qc.ca](mailto:manuel.klein@justice.gouv.qc.ca)  
[luc-vincent.gendron-bouchard@justice.gouv.qc.ca](mailto:luc-vincent.gendron-bouchard@justice.gouv.qc.ca)

**M<sup>e</sup> Christophe Achdjian**  
**M<sup>e</sup> Amélie Pelletier Desrosier Ministère de la justice**

4<sup>e</sup> étage  
1200, route de l'Église  
Québec (Québec)  
G1V 4X1

Tél.: 418 643-1477, poste 20732  
(M<sup>e</sup> Achdjian)

Tél. : 418 643-1477, poste 21006  
(M<sup>e</sup> Pelletier Desrosier)

Télé. : 418 644-7030

[christophe.achdjian@justice.gouv.qc.ca](mailto:christophe.achdjian@justice.gouv.qc.ca)  
[amelie.pelletier-desrosiers@justice.gouv.qc.ca](mailto:amelie.pelletier-desrosiers@justice.gouv.qc.ca)

**Counsel for the Appellant, Attorney General of Québec**

**M<sup>e</sup> Sibel Ataogul**

**M<sup>e</sup> Guillaume Grenier MMGC**

Bureau 300  
1717, boul. René-Lévesque Est Montréal  
(Québec)  
H2L 4T3

Tél. : 514 525-3414

Télé. : 514 525-2803

[sataogul@mmgc.quebec](mailto:sataogul@mmgc.quebec)

[ggrenier@mmgc.quebec](mailto:ggrenier@mmgc.quebec)

**Counsel for the Respondent, Bijou Cibuabua Kanyinda**

**M<sup>e</sup> Christine Campbell**  
**CDPDJ (Bitzakidis Clément-Major**  
**Fournier)**  
2<sup>e</sup> étage  
360, rue Saint-Jacques Montréal (Québec)  
H2Y 1P5

Tél. : 514 873-5146, poste 8384  
Télé. : 514 873-6032  
[christine.campbell@cdpdj.qc.ca](mailto:christine.campbell@cdpdj.qc.ca)

**Counsel for the intervener, Commission**  
**des droits de la personne et des droits de la**  
**jeunesse**

**M<sup>e</sup> Leah M. McDaniel**  
**Alberta Justice Constitutional and**  
**Aboriginal Law**  
10<sup>th</sup> Floor  
10025-102A Avenue N.W.  
Edmonton, Alberta  
T5J 2Z2

Tél. : 780 422-7145  
Télé. : 780 643-0852  
[leah.mcdaniel@gov.ab.ca](mailto:leah.mcdaniel@gov.ab.ca)

**Counsel for the intervener, Attorney**  
**General of Alberta**

**M<sup>e</sup> Rochelle Fox**  
**Attorney General of Ontario**  
4<sup>th</sup> Floor  
720 Bay Street  
Toronto, Ontario  
M7A 2S9

Tél. : 416 995-3288  
Télé. : 416 326-4015  
[rochelle.fox@ontario.ca](mailto:rochelle.fox@ontario.ca)

**Counsel for the intervener, Attorney**  
**General of Ontario**

**D. Lynne Watt**  
**Gowling WLG (Canada) LLP**  
160 Elgin Street  
Suite 2600  
Ottawa, Ontario  
K1P 1C3

Tél. : 613 786-8695  
Télé. : 613 788-3509  
[lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

**Agent for the intervener, Attorney General**  
**of Alberta**

**M<sup>e</sup> Marie-France Major**  
**Supreme Advocacy LLP**  
Suite 100  
340 Gilmour Street  
Ottawa, Ontario  
K2P 0R3

Tél. : 613 695-8855  
Télé. : 613 695-8580  
[mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for the intervener, Attorney General**  
**of Ontario**

**M<sup>e</sup> Ashley A. Caron**  
**Attorney General of British Columbia**  
PO Box 9280 Stn Prov Govt  
Victoria, Colombie-Britannique  
V8W 9J7

Tél.: 778 974-3342  
Télé.: 250 356-9154  
[ashley.caron@gov.bc.ca](mailto:ashley.caron@gov.bc.ca)

**Counsel for the intervener, Attorney  
General of British Columbia**

**M<sup>e</sup> François Joyal Me Justine Malone**  
**M<sup>e</sup> Lindy Rouillard-Labbé Procureur**  
**général du Canada**  
5<sup>e</sup> étage  
200, boul. René-Lévesque Ouest  
Montréal (Québec)  
H2Z 1X4

Tél. : 514 283-4934  
Télé. : 514 496-7876  
[francois.joyal@justice.gc.ca](mailto:francois.joyal@justice.gc.ca)  
[justine.malone@justice.gc.ca](mailto:justine.malone@justice.gc.ca) [lindy.rouillard-labbe@justice.gc.ca](mailto:lindy.rouillard-labbe@justice.gc.ca)

**Counsel for the intervener, Attorney  
General of Canada**

**M<sup>e</sup> Michael Sobkin**  
**Michael Sobkin Law Corporation**  
331 Somerset Street West  
Ottawa, Ontario  
K2P 0J8

Tél.: 613 282-1712  
Télé.: 613 228-2896  
[msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

**Agent for the intervener, Attorney General  
of British Columbia**

**M<sup>e</sup> Christopher Rupar**  
**Attorney General of Canada**  
Suite 500  
50 O'Connor Street  
Ottawa, Ontario  
K1A 0H8

Tél. : 613 786-0211  
Télé. : 613 954-1920  
[christopher.rupar@justice.gc.ca](mailto:christopher.rupar@justice.gc.ca)

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PROCUREUR GÉNÉRAL DE L'ALBERTA  
PROCUREUR GÉNÉRAL DE L'ONTARIO  
PROCUREUR GÉNÉRAL DE LA COLOMBIE-BRITANNIQUE  
PROCUREUR GÉNÉRAL DU CANADA

Interveners

and

ESCR-NET – INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS

Proposed Intervener

**AFFIDAVIT OF FERNANDO RIBEIRO DELGADO  
(AFFIRMED FEBRUARY 10, 2025)**

I, Fernando Ribeiro Delgado, of the City of West Orange, in the state of New Jersey of  
the United States of America, AFFIRM:

1. I am the Program Coordinator of the Strategic Litigation Working Group at ESCR-Net - International Network for Economic, Social and Cultural Rights (ESCR-Net), and, as such, have knowledge of the matters contained in this affidavit.

## **I. My Background**

2. I am an attorney licensed in the state of New York and have been at ESCR-Net in my current position since 2018. As Program Coordinator of the Strategic Litigation Working Group, I work to advance the legal implementation of international human rights law concerning the enjoyment of economic, social and cultural rights, such as the right to housing, food, healthcare and just and favourable conditions of work. This includes coordinating interventions by ESCR-Net, its members and allied organizations before international human rights bodies and domestic courts in key cases.

## **II. Overview of ESCR-Net**

3. ESCR-Net is a collaborative initiative of groups and individuals from around the world working to secure human rights, with a particular focus on economic, social and cultural rights (ESCR). Its inaugural conference was held in Chiang Mai, Thailand in 2003 with the participation of over 250 human rights advocates from 50 different countries. Registered in the United States, ESCR-Net has over 230 organizational members and some 50 individual advocates across more than 75 countries, including Canada. Many of its members work on issues related to women's right to just and favourable conditions of work and on migrants' rights.

4. ESCR-Net has worked extensively on issues related to human rights, including women's right to equality and non-discrimination as guaranteed in various international human rights treaties ratified by Canada, including the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW),

the *Convention on the Elimination of Racial Discrimination* (CERD), the *Convention on the Rights of Children* (CRC) and the *Convention on the Rights of Persons with Disabilities* (CRPD).

5. ESCR-Net's work emphasizes the importance of advancing and adopting interpretations of domestic law which are consistent with international human rights legal obligations and with the interdependence and indivisibility of all human rights, so as to ensure access to effective remedies in a wide range of domestic legal settings.

### **III. ESCR's Experience and Expertise**

#### **A. Promoting Adjudication of ESCR Claims Internationally**

6. ESCR-Net has conducted extensive research and undertaken advocacy on the adjudication of ESCR and related human rights, including the right non-discrimination, in a range of legal contexts. This work was particularly important to ESCR-Net's support of the work of a global nongovernmental organization (NGO) coalition formed to promote the adoption of a complaints procedure for ESCR – the Optional Protocol to the ICESCR (OP-ICESCR). With the support of ESCR-Net, the NGO coalition for an OP-ICESCR advocated for the creation of an optional complaints procedure to provide access to international adjudication for rights under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), as had existed since 1976 for rights under the *International Covenant on Civil and Political Rights* (ICCPR). This campaign was ultimately successful, with the historic adoption of the OP-ICESCR on 10 December 2008, by the United Nations (UN) General Assembly.

7. As part of the NGO coalition for the OP-ICESCR, ESCR-Net engaged with the UN working group mandated to draft the OP-ICESCR. Much of the research, consultation and public

education conducted with respect to drafting the new complaints procedure for ESCR concerned issues of the indivisibility, interdependence and justiciability of ESCR and civil and political rights in different domestic legal systems, including in states that do not have explicit constitutional protections of ESCR.

8. In the context of ongoing discussions of these issues within the UN and in the international community, members and staff of ESCR-Net have frequently engaged with delegates of member states of the UN and attended expert meetings to consider and address concerns about the proper role of courts in relation to legislatures in the adjudication, remedy and enforcement of ESCR-related human rights obligations and the design of effective remedies within different legal systems. ESCR-Net has conducted research into issues related to justiciability and judicial competence, separation of powers, and judicial deference and engaged in extensive consultations on these issues.

9. The approach taken by Canadian courts to substantive equality under section 15 of the *Charter* as well as to reasonable limits under section 1 of the *Charter* has been widely discussed and applied in various contexts of ESCR-Net's work. During discussions on the standard of review to be applied under the new complaints procedure in the OP-ICESCR, the High Commissioner on Human Rights, former Supreme Court Justice Louise Arbour, joined with ESCR-Net, other civil society organizations and a number of states in proposing a standard of "reasonableness" derived from standards applied to social and economic rights by courts in South Africa and the accommodation of persons with disabilities and other groups pursuant to the right to substantive equality elsewhere. Canadian human rights and *Charter* jurisprudence concerning the right to substantive equality and reasonable limits under section 1 provided important guidance in these discussions. A standard of reasonableness was eventually

incorporated into the OP-ICESCR, as well as the Optional Protocol to the CRPD. ESCR-Net has conducted extensive research into how this standard of reasonableness should be interpreted and applied both under the OP-ICESCR and in domestic constitutional interpretation.

10. These issues and others were addressed in a book project initiated and coordinated by ESCR-Net's Working Group on Adjudication (as it was then known) that led to the publication of *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary*, a publication with Pretoria University Law Press (2016). ESCR-Net also played a core role in the initiation, coordination, and dissemination of a 2017 research volume published by Cambridge University Press concerning access to justice and enforcement for ESCR entitled, *Social Rights Judgments and the Politics of Compliance*.

11. ESCR-Net has had extensive involvement with UN human rights treaty monitoring bodies in clarifying states' obligations under international human rights treaties, including related to the right to non-discrimination and specifically rights of access to necessary programs. In 2023, ESCR-Net prepared and made a submission to the Inter-American Court of Human Rights in response to Argentina's request for an advisory opinion on the right to care as derivable from Article 26 (on progressive development of ESCR) of the American Convention on Human Rights (7 November 2023). ESCR-Net's submissions emphasized that the right to care in connection with the right to equality and non-discrimination imposes both negative and positive obligations on States not to impede access to childcare and to take necessary measures to ensure access to childcare to secure just and favourable conditions of work for women.

## B. The Strategic Litigation Working Group

12. At ESCR-Net's Second General Assembly in Nairobi in 2008, members identified support for strategic litigation of ESCR as a key priority. A follow-up meeting of ESCR-Net members involved in litigating cases in a range of countries was subsequently held in New York in 2010 to consider how ESCR-Net could assist in promoting strategic litigation and improved adjudication of social rights claims. On the basis of this meeting, ESCR-Net's "Strategic Litigation Initiative" was launched to provide research, advice and support to advocates and stakeholders engaged in bringing forward important social rights claims and to provide assistance to domestic courts in adjudicating claims related to ESCR. This initiative was taken up by ESCR-Net's Adjudication Working Group, which is now known as the Strategic Litigation Working Group.

13. ESCR-Net's strategic litigation efforts support member organizations and others in advancing strategic cases related to ESCR and interdependent civil and political rights under domestic, regional and international law. ESCR-Net has convened meetings of advocates and researchers in a number of regions. Research papers have been presented by members of the judiciary, academic researchers and practitioners on how ESCR can be better claimed, adjudicated and enforced in a variety of legal settings. By facilitating the exchange of information among its members about important cases in different jurisdictions, ESCR-Net has sought to ensure that this rapidly developing area is informed by high quality collaborative research and creative thinking. The Strategic Litigation Working Group facilitates spaces for exchange and mutual learning among human rights groups, as well as in dialogue with governmental and intergovernmental bodies. ESCR-Net plays a leadership role in advancing the substantive legal interpretation of states' obligations with respect to ESCR and the

interconnections between ESCR and civil and political rights, including the right to equality and non-discrimination.

14. In cases involving women's socio-economic rights and right to equality, the Strategic Litigation Working Group works in collaboration with the Working Group on Women and Economic, Social and Cultural Rights, which unites grassroots organizations and legal advocates to challenge systemic gender inequalities and intersecting forms of oppression, such as those based on race, migration status and nationality. Through collective action, research, advocacy, and capacity-building, the Working Group on Women and Economic, Social and Cultural Rights addresses issues like economic discrimination, access to social programs, and the right to equal access to work and social protections, amplifying the voices of women and marginalized communities to ensure their rights are recognized and upheld.

15. ESCR-Net interventions are guided by the Steering Committee of the Strategic Litigation Working Group and the expertise of other members of the Working Group. The Steering Committee includes experts in law and human rights from all regions. Current members of the Steering Committee are: Diana Guarnizo, Ph.D, a human rights scholar and public interest lawyer at Dejusticia in Colombia; Kranti LC and Aakanksha Badkur, public interest litigators in India; Ahmed Elseidi, a public interest litigator in Egypt; Dr. Jackie Dugard, a South African lawyer and the Senior Lecturer at the Institute for the Study of Human Rights at Columbia University; Dr. Koldo Casla, the Senior Lecturer in International Human Rights and Director of the Human Rights Local project at the Human Rights Centre, University of Essex; Bruce Porter, an international human rights consultant at the UN Office of the High Commissioner for Human Rights and Director of the Social Rights Advocacy Centre in Canada; Daniel Cerqueira, a Brazilian lawyer and the Director of the Human Rights and Natural Resources Program at the

Due Process of Law Foundation in Washington D.C; Salima Namusoby, a Ugandan public interest lawyer and Vice President for Africa at the Center for Reproductive Rights, Kenya; and Mandi Mudarikwa, Head of Strategic Litigation at the international secretariat of Amnesty International.

16. In interventions before domestic courts, the Steering Committee relies on the expertise of local members and ensures that it retains lawyers who have a high level of expertise in both domestic and international law.

#### C. ESCR-Net's Caselaw Database

17. ESCR-Net has produced and maintains the largest multilingual caselaw database on jurisprudence related to economic, social, and cultural rights spanning international, regional, and domestic jurisdictions. Through its members and with the assistance of law school human rights centres, ESCR-Net conducts ongoing research into the adjudicatory decisions linked to ESCR in a wide range of forums. From this research, ESCR-Net has developed and continues to expand an online database of cases. The database provides access not only to decisions in important cases, but also to summaries, commentary and information on longer term outcomes.

#### D. Participation as Interveners in Human Rights Cases

18. In critical cases in which ESCR-Net can provide assistance to domestic courts or international human rights bodies in areas of its expertise, ESCR-Net seeks to intervene under the direction of the Strategic Litigation Working Group Steering Committee and with the participation of members of ESCR-Net with interest and relevant expertise. ESCR-Net has participated in a considerable number of proceedings before domestic courts and international



human rights bodies. ESCR-Net has intervened before Canadian courts to assist, *inter alia*, in their consideration of section 15 of the *Charter*:

- (a) In *Tanudjaja et al v. Attorney General of Canada and Attorney General of Ontario*, 2013 ONSC 1878, ESCR-Net together with Amnesty International was granted intervener standing by the Superior Court of Justice to present submissions on how international treaties may assist in determining how s. 7 and s. 15 of the *Charter* are to be interpreted to protect the rights of those who are homeless and, in particular, whether these provisions require positive measures to ameliorate the disproportionate impact of homelessness on members of protected groups.
- (b) In *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, ESCR-Net intervened jointly with Amnesty International Canada to assist the Court in considering the appeal of the Superior Court's decision granting Canada's Motion to Strike, in particular the finding that the *Charter* does not impose positive obligations to address homelessness.
- (c) In the case of *Toussaint v. Canada*, CCPR/C/123/D/2348/2014, 2018 ESCR-Net submitted a legal brief to the UN Human Rights Committee on issues of positive obligations to ensure access to essential health care in Canada as a component of rights to life and non-discrimination under the ICCPR. ESCR-Net provided its opinion, based on authoritative sources of international human rights and comparative law, that, among other things, the right to non-discrimination under international law requires positive measures by governments to address socio-economic disadvantage and inequality, including by ensuring access to essential

health care for migrants with irregular status. ESCR-Net submitted that Canada has an obligation to ensure access to effective remedies for violations of the right to non-discrimination under the ICCPR by applying similar principles of interpretation to these rights under the *Charter*. ESCR-Net also argued that the Human Rights Committee should, in line with jurisprudence of other human rights bodies, consider immigration status to be a prohibited ground of discrimination under article 26 of the UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966) [ICCPR].

- (d) ESCR-Net also intervened in *Toussaint v. Canada*, 2022 ONSC 4747. After Canada refused to give effect to the Human Rights Committee's decision in the above noted case, an action was commenced by Ms. Toussaint in Ontario Superior Court of Justice, challenging Canada's refusal to give effect to the Committee's decision as, *inter alia*, a violation of ss. 7 and 15 of the *Charter*. ESCR-Net was granted leave jointly with Amnesty International Canada on Canada's motion to strike to provide assistance to the Court with respect to relevant international law, the requirements of good faith (*pacta sunt servanda*) in the domestic implementation of international human rights obligations and the obligation to ensure effective remedies through interpretations of the *Charter* that are in conformity with binding international human rights treaties. In the main action, ESCR-Net was granted leave to intervene to assist the Court in considering the implications of the UN Human Rights Committee's decision on the interpretation of rights under the *Charter*, including the right to non-

discrimination on the ground of immigration status and on the principles governing good faith responses to decisions of UN human rights treaty bodies under ratified complaints procedures.

19. Since 2018, ESCR-Net has also coordinated domestic third party interventions, among others, before the Supreme Court of Justice of the Nation of Mexico (concerning inclusion of informal settlements in the census), the Constitutional Court of Serbia (concerning algorithmic discrimination tied to social welfare), the High Court of South Africa (Gauteng Division, Pretoria) (concerning redress for non-fulfilled housing grants and court orders), and the Constitutional Court of Ecuador (concerning the proper interpretation of UN Human Rights Committee remedies so as to safeguard the rights of peasant families).

#### **IV. ESCR-Net's Interest in this Case**

20. This Court has accepted that Canada's obligations under ratified international human rights treaties to which it is party can be important indicia of the meaning and scope of the protections afforded by similar provisions in the *Charter*. In this regard, the Court has significantly relied on jurisprudence and authoritative commentary from United Nations human rights treaty monitoring bodies for guidance as to the content of Canada's obligations under international human rights law. ESCR-Net's experience of engaging with these bodies with regard to the interpretation of the content of states' obligations will be of assistance to the Court in considering relevant international human rights law in the present case.

21. ESCR-Net's research, networking and accountability to rights-claiming individuals and organizations around the world helps to ensure that the content of international human rights treaties is understood in light of the interests meant to be protected and evolving norms. ESCR-

Net plays a similar role for courts and international human rights bodies in relation to the interpretation of international human rights law as public interest organizations advocating for affected groups have played before this Court in providing assistance in interpreting and applying domestic law, to ensure that the perspective, interests and experience of disadvantaged groups and those who most rely on human rights protections are fully understood and considered.

22. In the present case, ESCR-Net is well positioned to provide assistance to the Court in considering whether the right to equality imposes general positive obligations on States to adopt legislative or programmatic measures to ameliorate disadvantage or systemic inequality affecting specific groups identified as protected from discrimination and, in this case, whether there is an obligation to provide access to affordable child care to ensure equality for women, including women with irregular migration status.

23. This Court has recognized that its jurisprudence is not only guided by international human rights norms but also plays a role internationally in clarifying and evolving those norms. This has been the case with the understanding of substantive equality under international law, which has benefited significantly from Canadian human rights and *Charter* jurisprudence. ESCR-Net has relied significantly on this Court's understanding of the right to substantive equality, as articulated in decisions such as *Vriend v. Alberta*, 1998 CanLII 816 (SCC), [1998] 1 SCR 493 [*Vriend*] and *Eldridge*. ESCR-Net thus has a direct interest in the outcome of this Court's consideration of the issues related to substantive equality and access to subsidized childcare in this case, as well as in the rights of women with irregular immigration status.

24. The issues being considered by the Court in this case are critical to advancing ESCR-Net's promotion of an integrated approach to human rights to ensure that women's and migrants' right to equality and non-discrimination ensures access to adjudication and effective remedies for systemic inequality requiring positive measures to ameliorate. A cornerstone of ESCR-Net's support for domestic litigation is the principle enunciated by the CESCR in *General Comment No. 9 (The domestic application of the Covenant, E/C.12/1998/24, 3 December 1998)* that ICESCR "norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place." A correlative duty is expressed within the ICCPR's art. 2(3), which mandates state parties to the Covenant to provide for effective remedies, including judicial redress, for violations of rights contained in the ICCPR, including the right to non-discrimination.

25. ESCR-Net has long recognized the centrality of the right to substantive equality in ensuring access to effective remedies where disadvantaged groups are denied access to critical benefits or programs necessary to ameliorate systemic inequality. As noted by the CESCR: "Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights." (CESCR, *General Comment No. 9: The domestic application of the Covenant, E/C.12/1998/24* (3 December 1998) at para 15).

26. ESCR-Net believes that this case is of critical importance to the development of s. 15 of the *Charter* in the context of the government's alleged failures to provide access to necessary programs that address systemic inequality in line with international human rights obligations.

This case also provides an opportunity to consider intersecting grounds of discrimination on the basis of sex and immigration status, both of which are areas of interest and expertise of ESCR-Net and its members.

27. Canadian courts play an important role internationally in promoting the principle that international human rights law must have a critical influence on the interpretation of the scope of domestic constitutional rights. Improving access to effective remedies in matters like the present case in Canada is part of an international development of human rights and the rule of law. ESCR-Net is committed to constructive dialogue with domestic courts as they increasingly engage with issues of international human rights in domestic contexts.

28. For these reasons, ESCR-Net believes that the Court will benefit from the expertise and perspective of ESCR-Net, through its written and oral submissions.

## **V. ESCR-Net's Proposed Submissions**

29. If ESCR-Net is granted leave to intervene, it would make the submissions set out in its notice of motion for leave to intervene.


30. ESCR-Net will work to avoid duplication of submissions made by other parties to this appeal and will abide by any schedule set by this Court.

31. ESCR-Net does not seek leave to file any new evidence and will rely entirely on the record as it has been created by the parties.

32. ESCR-Net will not seek costs against any party or intervener in this proceeding. As a non-profit organization with limited resources, we respectfully request that no costs be awarded against it.

**AFFIRMED REMOTELY** by Fernando Ribeiro Delgado at the City of West Orange, in the state of New Jersey of the United States of America, before me by videoconference in the City of Ottawa, in the Province of Ontario on 10 February 2025, in accordance with O.Reg 431/20, Administering Oath or Declaration Remotely



  
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Commissioner for Taking Affidavits  
(or as may be)

*Fernando Ribeiro Delgado*  
\_\_\_\_\_  
**FERNANDO RIBEIRO DELGADO**

*Neil Abraham, LSO # 71852L*