

FEDERAL COURT OF APPEAL

B E T W E E N:

ALLIANCE FOR EQUALITY OF BLIND CANADIANS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

**REPLY OF THE PROPOSED INTERVENER,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**

1. Canada, while consenting to the Caring Society’s involvement in this proceeding as an intervener, seeks to narrow the scope of that intervention and minimize the assistance that the Caring Society can offer the Court. Specifically, Canada seeks to limit the Caring Society to submissions that the Canadian Human Rights Commission’s decision in this case was inconsistent with the Canadian Human Rights Tribunal’s decision in *Caring Society v Canada*, while prohibiting the Caring Society from making submissions regarding *Charter* values.

2. Canada mis-states the Caring Society’s position and misses an important nuance. Canada says that the Caring Society “advances arguments related to “the *Charter* value of equality” and the framework set out by the Supreme Court in *Doré* and *Loyola High School v Quebec (Attorney General)* [...]”¹ However, the Caring Society’s proposed submissions do not seek to make out a “breach” of s. 15 of the *Charter* or “infringement” of *Charter* values. To the contrary, as noted at the outset of the Caring Society’s written representations on this point, “the CHRC’s decision will have very real and damaging consequences for groups and individuals who receive services from Canada through third party corporate entities.”² The third paragraph of the Caring Society’s

¹ Written Representations (Motion for Leave to Intervene) of the Respondent, Attorney General of Canada at para 19 [**Canada Written Representations**], Motion Record of the Respondent (Motion for Leave to Intervene), Tab 2, p 61 [**Canada MR**], citing Written Representations of the Proposed Intervener, First Nations Child and Family Caring Society of Canada dated June 14, 2022 at para 38 [**CS Written Representations**], Motion Record of the Proposed Intervener [**CS MR**], Tab 3, p 89.

² CS Written Representations at para 37, CS MR, Tab 3, p 89.

representations on this point notes the Caring Society’s argument that “the reasonableness of the CHRC’s decision must be examined in light of the impact on equality rights” and “[s]uch defensibility cannot be found without considering the impact of the decision in question on equality rights and determining whether that impact is disproportionate to the decision-maker’s authority.”³ The Caring Society’s submissions are about the impact of the Commission’s interpretation on the groups the *CHRA* seeks to protect, which are also protected under the *Charter*’s equality guarantee.

3. Canada says that the Caring Society is attempting to insert issues into this appeal that are not already present, because they were not addressed directly by the parties.⁴ This submission fails to recognize the fundamental nature of human rights legislation and fails to properly construe the Appellant’s arguments earlier in this proceeding.

4. The Caring Society’s submissions on the impact of the Commission’s interpretation on rights would by no means be an expansion of the issues that were before the Commission or that are before the Court. The impact on equality rights is always at issue where the *CHRA* is concerned. Indeed, the Supreme Court of Canada found thirty years ago that quasi-constitutional human rights legislation is the “final refuge of the disadvantaged and the disenfranchised” and the “last protection of the most vulnerable members of society”.⁵ As such, any decision that narrows access to the *CHRA*’s framework has an impact on equality rights. They are always at stake. The nature of these impacts on disadvantaged, disenfranchised and vulnerable members of society outside of the circumstances of blind Canadians at issue in this appeal will be assistive to the Court in considering the broader implications of its decisions.

5. In any event, Canada takes a formalist position in arguing that the Caring Society is doing anything more than adding the verbiage of *Charter* rights or values to this proceeding. It argues that “*Charter* values” were not mentioned below. However, it is clear from the Appellant’s factum that the “adverse impact” (a key consideration under *Charter* equality jurisprudence) on blind,

³ CS Written Representations at para 39, CS MR, Tab 3, p 90.

⁴ Canada Written Representations at paras 24-27, Canada MR, Tab 2, pp 63-65.

⁵ *Zurich Insurance Co v Ontario (Human Rights Commission)*, [1992] 2 SCR 321 at 339, Book of Authorities of the First Nations Child and Family Caring Society of Canada [CS BOA], Tab 19.

deafblind and partially sighted individuals (a group protected by *Charter* equality rights) are a central tenet of its argument that the decision was unreasonable.⁶ It is also clear from the Federal Court’s reasons that the Appellant made “forceful submissions” in Federal Court that there was evidence of discrimination against individuals.⁷ The Federal Court reasons also note that “the AEBC made the same arguments to the Commission in writing.”⁸ The Caring Society seeks to place those submissions in the broader context of the “disadvantaged and disenfranchised”, with particular illustrative reference to the circumstances of First Nations children and families.

6. Contrary to Canada’s submissions, the Caring Society is not seeking to add a new ground of appeal.⁹ Instead, the Caring Society is dealing with an issue that has been raised by the Appellant throughout and is doing so by providing context in the goal of assisting the Panel hearing the appeal. Indeed, both before the Commission and the Federal Court, the Appellant has sought to rely on *Caring Society v Canada* in support of its position that Canada cannot shield itself from human rights scrutiny by proving services to third party organisations. The Caring Society’s proposed intervention seeks to provide this Court with its unique perspective of how this issue raised by the Appellant may impact First Nations children and their families when they receive public services provided by Canada through third party intermediates.

7. Indeed, as Stratas J.A. noted when he granted the Caring Society intervener status in *Canada (Attorney General) v Pictou Landing*, such contextual submissions may be of assistance to the Court in applying the reasonableness standard.¹⁰ In that case, the “context” provided by the Caring Society and the other party seeking intervener status sought to situate the issue in dispute “against the backdrop of section 15 Charter jurisprudence, international instruments, wider human rights understandings and jurisprudence, and other contextual matters.”¹¹

⁶ Appellant’s Memorandum of Fact and Law at paras 47-52.

⁷ *Alliance for Equality of Blind Canadians v Canada (Attorney General)*, [2021 FC 860](#) at para 48 [Federal Court Decision], Appeal Book [AB], Tab 6, p 67.

⁸ [Federal Court Decision](#) at para 48, AB, Tab 6, p 67.

⁹ Canada Written Representations at paras 20-21, Canada MR, Tab 2, pp 61-62.

¹⁰ [2014 FCA 21](#) at para 25 [*Pictou Landing*], CS BOA, Tab 4.

¹¹ [Pictou Landing](#) at para 23, CS BOA, Tab 4.

8. In reply to Canada’s reliance on the Court’s refusal to consider interveners’ submissions addressing the *Charter*, among other matters, in *Gordillo v Canada (Attorney General)*,¹² the Caring Society notes that that matter dealt with a refusal by the Public Sector Integrity Commissioner of Canada under the *Public Servants Disclosure Protection Act* to investigate allegations of wrongdoing at the Canadian Embassy in Mexico.¹³ Unlike the *CHRA*, which is quasi-constitutional legislation designed to protect the most vulnerable members of Canadian society, the *PSDPA* is public interest legislation aiming to enhance public confidence in the integrity of public servants.¹⁴ The aims of the *PSDPA* do not have the same readily identifiable impact on a *Charter*-protected group that is put in play by the Commission’s interpretation of the *CHRA* in this case (and which impact has been addressed by the Appellant, in the context of the particular vulnerable Canadians making up this claimant group).

9. Finally, Canada’s submissions seek to usurp the role of the Panel hearing this appeal. As Stratas J.A. held in *Pictou Landing*, “[i]n the end, the panel determining this appeal may find the contextual matters irrelevant to the appeal. At present, it is enough to say that the proposed interveners’ submissions on the contextual matters they propose to raise – informed by their different and valuable insights and perspectives – will actually further the Court’s determination of the appeal one way or the other.”¹⁵ It should be for the panel to determine whether the broader context of vulnerable victims, who also have *Charter* rights similar to those of the victims represented by the Appellant, is helpful. This determination will be made in light of the entire record before the Court, including the Respondent Attorney General of Canada’s factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on this 8th day of July 2022.

¹² Canada Written Representations at para 26, Canada MR, Tab 2, p 64.

¹³ *Gordillo v Canada (Attorney General)*, [2022 FCA 23](#) at paras 1-3, Book of Authorities of the Respondent, Tab 7.

¹⁴ [SC 2005, c 46](#) at Preamble.

¹⁵ [Pictou Landing](#) at para 27, CS BOA, Tab 4.



July 8, 2022

Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa ON K2A 3X9

M. Alyssa Holland
aholland@conwaylitigation.ca

Abdalla Barqawi
abarqawi@conwaylitigation.ca

David P. Taylor
dtaylor@conwaylitigation.ca

Tel: (613) 288-0149

Fax: (613) 688-0271

Counsel for the Proposed Intervener,
First Nations Child and Family
Caring Society of Canada