Dialogue or Conversation? The Impact of Public Interest Interveners on Judicial Decision Making

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This paper will explore the role of public interest advocacy organizations in Supreme Court of Canada cases from 1982 to 2002. More specifically, I will outline the extent and character of public interest interventions in Supreme Court cases in the last twenty years in the areas of labour law, family law, and equality rights law. Litigation strategies employed by interveners will be discussed, particularly the use of international law to influence the judicial interpretation of these areas of law.

I will elaborate my reasons for choosing these three areas, and my methodology below. To begin, I will discuss why I believe it is important to devote attention to these issues. First, I am interested in exploring the construction of constitutional litigation by the Supreme Court, which has used a "dialogue" metaphor in a number of cases to explain the development of the law, and the role of and discussion between the courts and the legislatures in this process.[1] I will discuss whether "conversation" is a more apt metaphor, and the breadth of this conversation, taking into account the role of public interest interveners in constitutional cases and in other areas of law.

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[1] *Vriend* v. *Alberta*, [1998] 1 S.C.R. 493 at paras. 137-139; *M.* v. *H.,* [1999] 2 S.C.R. 3 at paras. 78, 286, 328; *Corbiere* v. *Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at para. 116; *R.* v. *Mills*, [1999] 3 S.C.R. 668 at para. 57; *Little Sisters Book and Art Emporium* v. *Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120 at para. 268 [hereinafter *Little Sisters*]; *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] 2 S.C.R. 559 at paras. 65-66; *Sauvé* v. *Canada (Chief Electoral Officer)*, 2002 SCC 68 at paras. 17, 104-108; *R.* v. *Hall*, 2002 SCC 64 at para. 43; *Figueroa* v. *Canada (Attorney General)***,** 2003 SCC 37 at para. 183. The dialogue metaphor has its genesis in P.W. Hogg & A.A. Bushell, "The *Charter* Dialogue Between Courts and Legislatures" (1997) 35 Osgoode Hall L.J. 75. Hogg also uses the notion of "dialogue" in describing the role of interveners. See P.W. Hogg, "The Charter Revolution: Is It Undemocratic?" (2001/2002) 12:1 Constitutional Forum 1 at 4.

An analysis of this aspect of the role of interveners is timely, given the critique, from a range of perspectives, of the courts as "judicial activists".[2] It is trite to acknowledge the expanded role of the judiciary since the *Canadian Charter of Rights and Freedoms* came into effect in 1982, and to note that courts are not democratically elected nor accountable to the public. A broad approach to allowing interveners to appear before the courts may offset this critique to a degree, and ensure that judges hear from as wide a range of voices as their counterparts in the legislature.

A second reason for studying public interest advocacy flows out of self interest. I have been involved in the Women's Legal Education and Action Fund (LEAF) as a staff lawyer and volunteer since 1995. My own experience, and my assumption in undertaking this research is that the work of interveners matters in allowing the courts to consider a range of perspectives on the issues before them.[3] I am interested in exploring the different approaches taken by interveners, and the influence of these approaches, with a view to enhancing the conversation amongst intervener groups so that they can continue and strengthen their ability to be of assistance to the courts.

A third reason for studying public interest interventions relates to recent comments by members of the Supreme Court that public interest groups have had their day in court, and it is perhaps time to be more restrictive about allowing intervener status. Justice Iacobucci, in a 2000 interview with *The Globe and Mail*, said of interveners: "Should there be

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[2] See for example F.L. Morton & R. Knopff, *The Charter Revolution and the Court Party*, (Peterborough: Broadview Press, 2000); C. Manfredi, *Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism* (Don Mills: Oxford University Press, 2001); F.C. DeCoste, "The Separation of State Powers in Liberal Policy: *Vriend* v. *Alberta*" (1999) 44 McGill L.J. 231; M. Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thompson Educational Publishing, 1994). For responses to Morton & Knopff, see P.W. Hogg, *ibid.*; M. Smith, "Ghosts of the Judicial Committee of the Privy Council: Group Politics and Charter Litigation in Canadian Political Science" (2002) 35 Canadian Journal of Political Science 3. Smith also discusses the role of the media in the critique of judicial activism (at 4).

[3] In this sense, I am what Gregory Hein calls a "judicial democrat", as it is my view that the litigation process can "enhance democracy" rather than curtail it, particularly as regards the interests of the disadvantaged. See G. Hein, "Interest Group Litigation and Canadian Democracy", in P. Howe & P. Russell, eds., *Judicial Power and Canadian Democracy* (Montreal: McGill-Queen's University Press, 2001) 214 at 217, 237. For an earlier proponent of this view, see P.L. Bryden, "Public Interest Intervention in the Courts" (1987) 66 Can. Bar Rev. 490.

as many? ... Looking back, those intervenors played a highly significant role. But it's now getting on to be 18 years or so later. Should we be looking at the question in different ways?"[4] In 1999, Justice Major commented on interveners as follows:

> "Those interventions that argue the merits of the appeal and align their argument to support one party or the other with respect to the specific outcome of the appeal are ... of no value. That approach is simply piling on, and incompatible with a proper intervention. ...
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> [I]f interveners fail to demonstrate the value of their role, the present liberal granting of that status may grow more restrictive."[5]

Other commentators have been critical of the frequency and tenor of interventions as well.[6] Most notably, Morton and Knopff have critiqued "the court party" on the basis that interveners wield unprecedented powers, at state expense, to put forward and realize their policy objectives.[7]

Another significant development is that in 1999, the Supreme Court announced that it would "strictly enforce" the rules for applications for leave to intervene.[8] A study by Patrick Monahan shows that the Court continued to grant intervener status generously in the year immediately following these remarks,[9] but more recent cases indicate that the Court has

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4 K. Makin, "Intervenors: how many are too many?" *The Globe and Mail* (March 10, 2000) A2.

5 Mr. Justice J.C. Major, "Interveners and the Supreme Court of Canada" (1999) 8:3 *National* 27 at 27, 28.

6 DeLloyd Guth, professor of law at the University of Manitoba, was also cited in the Makin article as somewhat skeptical of interveners: "Let's face it. Some intervenors are there in the hope of a headline or a byline. They want to be able to go back and justify themselves at the group's annual meeting. The court doesn't need that." *Supra* note 4.

7 F.L. Morton & R. Knopff, *supra* note 2 at 26.

8 Supreme Court of Canada, *Notice to the Profession* (September 1999).

9 P. Monahan, "Intervention in Constitutional Cases At Supreme Court Increase Despite Stricter Enforcement of Rules" (Osgoode Hall Professional Development Program, 2000 Constitutional Cases, April 2001) [unpublished]. Monahan found that "the frequency and number of interventions in constitutional cases at the Supreme Court of Canada increased in 2000" (at 1). See also B.A. Crane & H.S. Brown, *Supreme Court of Canada Practice 2002*, (Scarborough: Carswell, 2002) at 300, who note that the Court rarely denies applications for leave to intervene. The authors do

been more restrictive in allowing applications for interventions, and even where it does so, in allowing oral submissions to be made. If it is the case that interventions are being limited, what impact will this have on the development of the law, and on principles of democracy and participation?

In terms of methodology, I reviewed all Supreme Court of Canada decisions in labour,[10] family[11] and equality rights[12] law from 1982 to 2002 to assess a number of trends: numbers of interventions, frequency of interventions of particular public interest groups, the number of interventions where coalitions or groups were at play, and the use of international law by interveners, parties and the Court. I selected these three subject areas because they cover the spectrum in terms of areas of law traditionally considered to be private and public, and I am interested in exploring different levels of interventions along this spectrum.[13] I also reviewed recent cases where intervener applications were denied or restricted, to determine the trends in this area.

Second, I conducted interviews with representatives of four of the five public interest groups that intervened most often in family, labour and equality rights cases from 1982 to 2002.[14] Interveners were asked a series

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cite a number of cases in which leave was recently denied, or interveners were limited to written submissions. These cases will be discussed below at 14-15, below.

[10] This category includes both labour and employment law cases, and cases involving the statutory regulation of the workplace.

[11] This category includes matrimonial property, divorce, custody and access, spousal and child support, child welfare, parental benefits, and immigration cases.

[12] The equality rights cases in the sample exclude criminal cases, as most such cases involve multiple sections of the *Charter*. I chose to focus on "pure" equality cases where a law or state action was being challenged as violating s. 15 of the *Charter* as opposed to cases where s. 15 was cited to support a law, or as an interpretive principle.

[13] Future research will explore the impact of rights discourse in challenging the public/private divide, and the role of interveners in this respect. There is a vast literature critiquing the categorization of laws as private and public. See for example S.B. Boyd, ed., *Challenging the public/private divide: feminism, law, and public policy* (Toronto: University of Toronto Press, 1997); Law Commission of Canada, ed., *New Perspectives on the Public-Private Divide* (Vancouver : UBC Press, 2003).

[14] Interview with Diana Majury, Chair, National Legal Committee, LEAF (August 18, 2003) [hereinafter LEAF interview]; Interview with Bruce Porter, Coordinator, Charter Committee on Poverty Issues (August 18, 2003) [hereinafter CCPI interview]; Interview with Laurie Beachell, National Coordinator, Council of Canadians with Disabilities (August 20, 2003) [hereinafter CCD interview]; Interview with Alan Borovoy, General Counsel, Canadian Civil Liberties Association (August

of questions about their legal strategies, their processes and criteria for selecting and developing arguments in cases, and their measurements of success.

In section II of this paper, I will review the extent of public interest interventions in the selected areas from 1982 to 2002, and the strategies of the public interest groups involved in these interventions. In section III, I will address the influence of the interveners' use of international law, and the Court's treatment of these submissions. My research supports the conclusion that public interest interveners should be seen as an integral part of a conversation amongst the courts, legislatures and the broader public.

I. PUBLIC INTEREST INTERVENTIONS BEFORE THE SUPREME COURT OF CANADA, 1982-2002

Table 1 – Number of Interventions at Supreme Court, 1982-2002[15]

Interveners	Family	Labour	Equality	Total Interventions	Coalitions
Any public interest interveners	**18**	**25**	**27**	**55**	**21**
Women's Legal Education and Action Fund (LEAF)	9	5	9	**17**	4
Canadian Labour Congress	0	11	5	**12**	2
Canadian Civil Liberties Association	2	5	2	**9**	0
Council of Canadians with Disabilities	0	4	6	**8**	3
Charter Committee on Poverty Issues	4	0	6	**7**	1

22, 2003) [hereinafter CCLA interview]. An interview could not be arranged with a representative of the Canadian Labour Congress.

15 As my interest is in the influence of public interest groups, I have not included interventions by attorneys general, or by tribunals and other government bodies.

As shown in Table 1, the total number of cases with public interest interveners in the areas of family, labour and equality rights law from 1982 to 2002 is 55.[16] Of these cases, 18 are decisions in family law, 25 are decisions in labour law, and 27 are decisions in equality rights law.[17] Of particular interest is the number of equality rights cases, which can be compared to the number of Supreme Court cases in this area from 1982 to 2002 where there were no interveners: ten cases.[18] Interveners were thus present nearly three times more often than not in equality rights cases. Given that the mandates of several intervener groups relate to the promotion and protection of equality rights, or the restriction of such rights, as will be discussed below, this is not a surprising result. Another matter of note is that there were significant numbers of public interest interventions in family and labour law cases, even though these areas of law have traditionally been viewed as "private".

Table 1 also sets out the five public interest groups that intervened most frequently in the 55 cases, and in which areas.[19] According to Table 1, LEAF was the most frequent intervener in the three subject areas, with a total of 17 interventions. These interventions occurred in all three subject areas, although equality rights and family cases were the most frequent sites of involvement for LEAF. The Canadian Labour Congress had 12 interventions, predominantly in labour and employment law cases, but

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[16] A list of these cases is set out in Appendix 1.

[17] Some cases are classified as falling into more than one of these subject areas. For example, *Dunmore* v. *Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 [hereinafter *Dunmore*], see Appendix 1 at ix, below, is a labour and equality case; *Thibaudeau* v. *Canada*, [1995] 2 S.C.R. 627 [hereinafter *Thibaudeau*] (see Appendix 1 at iii, below) is a family and equality case. It must also be remembered that s. 15 of the *Charter* did not come into effect until 1985, so there is a 3 year shorter time period for these cases.

[18] *Rudolph Wolff & Co.* v. *Canada*, [1990] 1 S.C.R. 695; *Dywidag Systems International, Canada Ltd.* v. *Zutphen Brothers Construction Ltd.*, [1990] 1 S.C.R. 705; *Harrison* v. *University of British Columbia*, [1990] 3 S.C.R. 451; *Stoffman* v. *Vancouver General Hospital*, [1990] 3 S.C.R. 483; *Douglas/Kwantlen Faculty Assn.* v. *Douglas College,* [1990] 3 S.C.R. 570; *McKinney* v. *University of Guelph*, [1990] 3 S.C.R. 229; *Haig* v. *Canada*, [1993] 2 S.C.R. 995; *Miron* v. *Trudel*, [1995] 2 S.C.R. 418; *Law* v. *Canada (Minister of Employment and Immigration*), [1999] 1 S.C.R. 497; *Nova Scotia (Attorney General)* v. *Walsh*, 2002 SCC 83.

[19] Again, there is overlap in the categories of cases, so the numbers in the different subject areas may be more than the total number of interventions. There are a number of other interveners that are close behind the top five in these subject areas: Equality for Gays and Lesbians Everywhere (5 interventions), the Evangelical Fellowship of Canada (4 interventions), and the Canadian Bar Association (4 interventions).

also in an equality case outside the labour context.[20] The Canadian Civil Liberties Association intervened in 9 of the 55 cases, most often in the labour area.[21] The Council of Canadians with Disabilities[22] had 8 interventions, mostly in the area of equality rights. Lastly, the Charter Committee on Poverty Issues intervened in 7 cases, also predominantly in the area of equality rights. The total number of cases where one or more of these five groups was present is 37, or two thirds of the total number of cases with interveners in the selected areas.

One observation from this data is that all of the groups intervening most often in the three subject areas examined could be classified as rights seeking groups. For the most part, the interventions of these groups are based on ideologies which seek to promote individual or group rights and freedoms, as opposed to restricting them. This result is obviously affected by my choice of subject areas, as research looking at interventions more broadly indicates that other interest groups are frequently present before the courts, including corporate interests, professionals, and social conservatives.[23] This is apparent in my sample of 55 cases, where several of the interveners appearing multiple times were social conservatives seeking to restrict the rights of the disadvantaged, and to protect the "traditional family".[24]

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[20] *Egan* v. *Canada*, [1995] 2 S.C.R. 513 [hereinafter *Egan*], see Appendix 1 at iii, below.

[21] The CCLA only made s. 15 arguments in one of the equality cases, *Adler* v. *Ontario*, [1996] 3 S.C.R. 609 (see Appendix 1 at iv, below).

[22] This group was formerly called the Coalition of Provincial Organizations of the Handicapped (COPOH), and I have included cases involving both organizations in the sample.

[23] These are the terms used by Gregory Hein, *supra* note 3 at 218-219. See also Mandel, *supra* note 2, who argues that business interests have played a powerful role as interveners.

[24] For example, REAL Women intervened in a number of cases: *Tremblay* v. *Daigle*, [1989] 2 S.C.R. 530 [hereinafter *Tremblay*], see Appendix 1 at ii, below; *Canada (Attorney General)* v. *Mossop*, [1993] 1 S.C.R. 554 [hereinafter *Mossop*], see Appendix 1 at iii, below; *M.* v. *H.*, [1999] 2 S.C.R. 3, see Appendix 1 at vi, below. Focus on the Family intervened in *Mossop*, *Vriend* v. *Alberta*, [1998] 1 S.C.R. 493 [hereinafter *Vriend*], see Appendix 1 at vi, below, and *M.* v. *H.* The Evangelical Fellowship of Canada intervened in *Mossop, Winnipeg Child and Family Services* v. *G. (D.F.)*, [1997] 3 S.C.R. 927, see Appendix 1 at v, below, *Vriend*, and *M. v. H.*

A related trend is that in cases where more than one of the top five interveners was present, the groups would typically appear on the same side of the issue.[25] This observation is not to detract from the nuances or different perspectives of the arguments made by the interveners, however.[26] Moreover, if criminal cases had been included in the sample, this trend would likely have been different, particularly comparing the positions of the Canadian Civil Liberties Association and the other groups.[27]

Interviews with representatives of the most frequent intervener groups in the selected areas suggest that most have a sophisticated process for case selection. The groups begin with their mandates, and choose cases which will further this agenda.[28] This may involve taking on cases outside of their specific areas of interest to focus on the development of theory.[29] Even within their mandates, groups are selective about which cases they seek to intervene in, looking at a range of factors: whether the case will further the interests of their constituency, particularly the most vulnerable members,[30] the impact they might make in the case, including a

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[25] For example, in *Tremblay*, *ibid*., LEAF and the Canadian Civil Liberties Association both supported the abortion rights of the respondent Chantal Daigle; in *U.F.C.W., Local 1518* v. *KMart Canada Ltd.*, [1999] 2 S.C.R. 1083 [hereinafter *Kmart Canada Ltd.*], see Appendix 1 at vii, below, the Canadian Labour Congress and the Canadian Civil Liberties Association both supported a broad right of secondary picketing.

[26] For example, in the *Little Sisters* case, *supra* note 1, Appendix 1 at viii, below, the Canadian Civil Liberties Association focused its submissions on freedom of expression under s. 2(b) of the *Charter*, while LEAF was concerned with equality rights under s. 15.

[27] For example, LEAF and the Canadian Civil Liberties Association took opposing positions on the constitutionality of the rape shield provisions in *R.* v. *Seaboyer*, [1991] 2 S.C.R. 577; *R.* v. *Gayme*, [1991] 2 S.C.R. 577.

[28] The mandates of the groups are: LEAF: the advancement of the equality rights of all women and girls in Canada; CCD: promotion of the equality rights of persons with disabilities; CCLA: protection and promotion of fundamental civil liberties and human rights; CCPI: promotion of the rights of the poor under international human rights law, the *Charter*, human rights law, and other laws in Canada; CLC: promotion of fair wages and working conditions, improved health and safety laws, fair taxes and strong social programs, and social equality.

[29] For example, LEAF intervened in *Law Society British Columbia* v. *Andrews*, [1989] 1 S.C.R. 143 [hereinafter *Andrews*] (see Appendix 1 at i, below), although this was not a case involving women's equality, in order to shape the Court's approach to s. 15 of the *Charter*; the Canadian Labour Congress intervened in *Egan*, *supra* note 20 (see Appendix 1 at iii, below), although this was not a labour or employment case.

[30] Interviews with CCD, CCLA, LEAF, *supra* note 14.

consideration of whether other interveners will make similar arguments,[31] overall case load, in terms of both human resources and the range of issues involved,[32] remedial issues,[33] follow up potential for the group's law reform and education activities,[34] and cost.[35] Many of the groups noted the difficulty in mounting interventions involving provincial legislation, given that the Court Challenges Program (CCP) funds only challenges to federal law.[36] This often effectively excludes interventions in cases within the areas of interest of many of the groups in question. For example, laws relating to social assistance, health, and the family are often within provincial legislative competence, and beyond CCP's mandate.

Processes for case selection vary, but all of the groups interviewed employ extensive discussions within the organization before deciding whether to seek intervener status in a case. A majority of the groups also undertake consultations with legal experts, members of their constituencies and other public interest groups in making this decision.[37] The process for developing arguments in an intervention is similarly complex for all of the groups interviewed, including discussions amongst counsel, committees of experts, and members of the affected communities. Some groups spoke of the time and expense involved in this process, and reiterated the importance of funding for interventions.[38]

It is important to note that public interest litigation is not the only legal strategy utilized by these groups. All groups were involved, to a greater or lesser extent, in law reform activities—submitting briefs to government, testifying before legislative committees, and consulting with government

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31 Interviews with CCLA, CCPI, LEAF, *ibid.*

32 Interviews with LEAF, CCPI, *ibid*.

33 Interviews with LEAF, CCD, *ibid*.

34 Interview with LEAF, *ibid*.

35 Interviews with LEAF, CCPI, CCD, *ibid*. (although CCD noted that it is one of the few organizations with core funding). Cost was said not to be such a significant issue for the CCLA, even though it accepts no government or Court Challenges Program funding. Of course, the participation of interveners may also increase the costs of the parties. For a discussion of this issue, see Bryden, *supra* note 3 at 516.

36 Interviews with LEAF, CCPI, CCD, *ibid*.

37 Interviews with LEAF, CCPI, CCLA, *ibid*.

38 Interviews with LEAF, CCD, and CCPI, *ibid*.

officials—as well as international human rights work,[39] public, legal and judicial education,[40] media work,[41] and other research and writing activities.[42] The groups may undertake more than one legal strategy in relation to a particular issue, and for most, the relative level of public interest litigation changes over time.[43] This supports the contention that the groups are involved in a conversation with both the courts and legislatures.

Interveners often work together in coalition or alliance—in other words, they work with one another to file a joint factum and deliver one set of oral submissions in a given case. In the sample of all cases with interveners, the total number of cases where coalitions were at work is 21/55; and in the smaller sample involving the top five interveners, it was 14/37—over 35%—of the cases in both samples.[44] Interviews with the most frequent interveners elaborated on why the groups work in coalition: to share costs,[45] to trade ideas and expertise,[46] and to deal with intersecting issues.[47] Coalitions may be centred around a particular constituency,[48] or around a particular issue, including the development of theory.[49] All of the

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[39] Interview with CCPI, *ibid*. This work includes submissions to the Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee, the preparation of shadow reports, and education at the international level.

[40] Interviews with LEAF, CCPI, CCLA, and CCD, *ibid*.

[41] Interviews with CCLA, LEAF, *ibid*.

[42] Interviews with LEAF, CCLA, CCPI, *ibid*. All the groups interviewed provide copies of their intervener facta and government submissions on request, and sometimes on their websites.

[43] LEAF estimates that it does 75% litigation and 25% law reform and legal education; CCD noted that in its early days, it did mostly law reform, but its litigation activities increased in the 1990s due to government cutbacks and deficit reduction, making law reform and lobbying less viable options; for CCLA, litigation is a more recent strategy as compared to law reform; and CCPI engages in approximately 65-70% litigation and 30% law reform and international human rights work.

[44] See Appendix 1, below.

[45] Interview with CCPI, *supra* note 14.

[46] Interviews with CCPI, CCLA, and LEAF, *ibid*.

[47] Interviews with CCPI, LEAF, *ibid*.

[48] For example, CCD often intervenes in coalition with other disability rights groups, and LEAF often intervenes with other groups focusing on women's equality.

[49] Interviews with CCD, CCPI and LEAF indicate that these three groups often intervene in coalition with other equality seeking groups, even if the groups have a

groups interviewed were adamant that coalition work is undertaken not just for the sake of it, or to "pile on" interveners, but to make the intervention more meaningful. Coalition work renders the intervention process more time consuming, expensive, and complicated; it is not done lightly.[50] The groups viewed coalition work as positive for the courts, as it reduces the number of written and oral arguments overall, and allows the courts to explore the intersections of different perspectives and contexts.[51] At the same time, groups should not be forced to work together in an intervention, as has happened in at least two Supreme Court cases, given the process and resource issues raised above.[52]

In addition to working in formal associations, public interest groups may share ideas, arguments, and strategies even if only one of the groups applies for intervener status in a case.[53] Moreover, interveners often meet before a case is heard, or even before their motions for leave to intervene are filed, in order to work out their respective areas of interest and to ensure no duplication occurs.[54]

Thus, it is fair to say that there is significant dialogue amongst interveners, and a well developed process for determining which groups will file motions for leave to intervene, in which cases, with whom, and with what submissions. Limits on resources, both financial and human, indicate that these interveners are very selective about where they believe they can offer the most insight.

Despite this selectivity, there are a number of recent cases where the Supreme Court has denied or restricted interventions. In *Dunmore* v. *Ontario*, the Charter Committee on Poverty Issues was denied leave to

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different constituency. The CCLA typically restricts its alliances to other civil liberties groups, although it may work more broadly in its law reform work.

50 Interviews with CCD, CCPI, LEAF, *ibid*.

51 Interviews with LEAF, CCPI, *ibid*.

52 See J. Sopinka & M.A. Gelowitz, *The Conduct of an Appeal*, 2nd ed. (Toronto: Butterworths Canada Ltd., 2000) at 272, citing *Central Okanagan School District No. 23* v. *Renaud*, [1992] 2 S.C.R. 970 [hereinafter *Renaud*] (Appendix 1 at ii, below) and *Canadian Council of Churches* v. *Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236.

53 Interviews with CCPI, LEAF, *supra* note 14.

54 Interviews with CCPI, CCD, LEAF, *ibid*. (although CCD noted that this has become more difficult now that many organizations are strapped for resources).

intervene.[55] In *Lovelace* v. *Ontario*, several groups were either denied leave to intervene,[56] or restricted to written submissions.[57] The second trend is notable in other cases as well.[58] Unfortunately, reasons are often not provided for these decisions, or they are generic, noting that the applicants did not satisfy the Court that they would provide fresh information or a fresh perspective on the issues in the case.[59] Reasons would certainly be helpful to interveners so that they could respond to the concerns of the Court in future applications. The Court is also becoming stricter with late applications, as it noted it would in its 1999 *Notice to the Legal Profession*.[60]

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[55] *Dunmore*, *supra* note 17, see Appendix 1 at ix, below. See Supreme Court of Canada, *Bulletin of Proceedings* (August 25, 2000), Major J. CCPI's application for reconsideration was denied on January 8, 2001. See Supreme Court of Canada, *Bulletin of Proceedings*, (January 19, 2001), Major J. Reasons were not given for either decision.

[56] Groups denied leave to intervene in *Lovelace* v. *Ontario*, [2000] 1 S.C.R. 950 [hereinafter *Lovelace*] (see Appendix 1 at viii, below) include the B.C. Native Women's Society, Antoine Algonquin First Nation and Aboriginal Legal Services of Toronto Inc. See Supreme Court of Canada, *Bulletin of Proceedings* (July 9, 1999), Bastarache J.

[57] Groups denied leave to present oral arguments in *Lovelace*, *ibid.* include CCPI and the Metis National Council of Women.

[58] For example, in *Boston* v. *Boston*, [2001] 2 S.C.R. 413 [hereinafter *Boston*], see Appendix 1 at viii, below, LEAF was granted leave to intervene, but was not permitted to make oral arguments. See Supreme Court of Canada, *Bulletin of Proceedings* (January 12, 2001), Binnie J.: "LEAF's written argument fully sets out the general principles that in LEAF's submission ought to govern the disposition of cases such as the present; and ... it would be inappropriate to permit LEAF to appear at the hearing of the appeal to make detailed submissions supporting the respondent's position on the merits any more than is already done in the written argument". See also *Dunmore*, supra note 17, Appendix 1 at ix, where the Labour Issues Coordinating Committee's request to present oral argument was dismissed (Supreme Court of Canada, *Bulletin of Proceedings* (February 23, 2001)).

[59] For example, see *Lovelace*, *supra* note 56 (Appendix 1 at viii, below), Supreme Court of Canada, *Bulletin of Proceedings* (July 9, 1999), Bastarache J.; *Boston*, *ibid*. (Appendix 1 at viii, below).

[60] See *Lovelace*, *ibid*. For a case to the contrary, see *Berry* v. *Pulley*, [2002] 2 S.C.R. 493, Appendix 1 at ix, where the Canadian Labour Congress was allowed an extension of time to file its motion (Supreme Court of Canada, *Bulletin of Proceedings* (June 8, 2001), L'Heureux Dubé J.).

Many of the groups interviewed find the inability to make oral arguments frustrating.[61] This is particularly so given that interveners' facta are typically limited to 20 pages, and oral argument is seen as an opportunity to emphasize critical points and develop the nuances of the arguments beyond what is possible in a document of this length. Moreover, the interveners believe that oral argument provides a chance to engage the Court and respond to its questions, thereby having a true dialogue.[62]

Interestingly, there are a number of leading Supreme Court cases where public interest groups did not seek intervener status. For example, in *Law* v. *Canada*, the Court developed new guidelines for claims under section 15 of the *Charter*, but there were no interveners involved in the case.[63] Many observers were surprised that the Court took this opportunity to consolidate its approach to section 15 without the assistance of interveners who had been present in so many other equality rights cases. This new test for section 15 has been extensively critiqued, and it must be asked whether having interveners there would have made a difference.[64] One possible solution is that courts could post a call for interveners if they intend to use a case as one where new tests or guidelines will be developed. While this does not appear to have been done at the Supreme Court, it has happened at the lower court level.[65]

Overall, then, interveners have been present in a large number of cases in all three areas canvassed in this study. Interviews with the four most frequent interveners reveal that this involvement is well thought out and coordinated, and that the groups attempt to make their voices heard on the most critical issues, and in the most significant fora. This gives rise to the next question—are the voices of interveners being heard?

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61 Interviews with LEAF, CCPI, *supra* note 14.

62 Interviews with LEAF, CCLA, *ibid*. CCLA did note that perhaps oral argument was not always required, but said that if it was granted, 10 minutes was not sufficient.

63 *Law* v. *Canada*, *supra* note 18.

64 See B. Baines, "*Law* v. *Canada*: Formatting Equality" (2000) 11:3 Constitutional Forum 65 at 67. For other critiques of the case, see D. Pothier, "Connecting Grounds of Discrimination to Real People's Real Experiences", (2001) 13 C.J.W.L 37; J. Ross, "A Flawed Synthesis of the Law", (2000) 11:3 Constitutional Forum 74.

65 See *Kane* v. *Alberta Report*, 2001 ABQB 570, where the Alberta Court of Queen's Bench called for interveners in a special case to assist it in rendering an opinion on the interpretation of a new section of the *Human Rights, Citizenship and Multiculturalism Act*.

II. THE IMPACT OF PUBLIC INTEREST INTERVENTIONS: THE EXAMPLE OF INTERNATIONAL LAW

A more difficult issue is how to assess the impact of public interest interveners on the development of the law in the selected areas. While this may seem to be a simple matter of methodology, it also raises the question of whether this is a challenge to which interveners should have to respond.[66] By definition, interveners are playing a valuable role when they make submissions to the courts, as they are only granted leave where they will present arguments "which will be useful and different from those of the other parties."[67] Still, given the recent tendency of the Supreme Court to fail to recognize the benefit of interveners in some cases, it is pertinent to review this issue.

In terms of methodology, one could try to determine the win/loss records of interveners, and draw inferences about their influence in this way.[68] A problem with this approach, however, is how to decide whether a case is a win or loss. This may do an injustice to the nuances in the interveners' arguments, and may ignore the long term, incremental impact of their submissions.[69] Another approach would be to look at explicit references to interveners by the courts, whether positive or negative. The difficulty of this method is that courts often adopt or reject interveners' positions without attributing them to the groups in question.[70] A third approach is to review interveners' arguments and the court's decisions, to try to assess the court's receptivity to the submissions in substance if not by explicit reference. I decided to test the latter method by looking at a discreet issue—the use of international law by interveners and the courts.[71]

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66 I thank Philip Bryden for engaging me on this point.

67 *Reference re: Workers' Compensation Act, 1983 (Newfoundland)*, [1989] 2 S.C.R. 335 at 339.

68 See, for example, Morton & Knopff, *supra* note 2 at 26 (referring to LEAF).

69 M. Smith is also critical of an approach that focuses on win/loss records, *supra* note 2 at 26-27.

70 This was a complaint for at least one intervener, who noted that courts should acknowledge interveners explicitly as a sign of respect. It was noted that this is done more often in the United States. Interview with CCLA, *supra* note 14.

71 I used a broad definition of international law, including not only treaties to which Canada is a party, but other treaties, declarations and resolutions, and reports and decisions of international bodies. This is in keeping with *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 [hereinafter *Baker*], see

For this part of the study, I restricted the sample to the same areas of law, and reviewed those cases where one or more of the five most frequent intervener groups was present. This was done in order to have a smaller, more manageable sample size, and based on my assumption that there is a greater likelihood of a group making arguments based on international law if it has some sophistication and expertise as an intervener. I reviewed the facta of all parties and interveners, and the decisions in these cases to determine the extent to which interveners are using international law in their submissions, the extent to which this is the only or primary way these arguments are being placed before the Court, and the extent to which the Court has adopted these arguments in its judgments.

Table 2

Use of International Law by parties, interveners and the Supreme Court

Case	Court cited International Law	Interveners Cited International Law	Parties Cited International Law
Andrews (1989)	Yes	Yes (LEAF)	Yes
Lavigne (1991)	Yes	Yes (CLC)	Yes
Egan (1995)	Yes	Yes (EGALE, Interfaith coalition)	No
Gordon v. *Goertz* (1997)	Yes	No	No
Winnipeg Child and Family Services v. *G.* (1997)	Yes	Yes (Women's Health Clinic coalition, Centres jeunesse du Quebec, Catholic Group for Life)	No
Granovsky (2000)	Yes	No	No
Dunmore (2001)	Yes	Yes (CLC)	Yes
Gosselin (2002)	Yes	Yes (CCPI, others)	Yes

Table 2 sets out eight family, labour and equality rights cases from 1982 to 2002 where the Court cited international law, and where one or more of the five interveners was present.[72] In six of the eight cases, or

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Appendix 1 at vi, below, where a majority of the Court took a broad approach to the use of international law. See also *Suresh* v. *Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 [hereinafter *Suresh*], where the Court unanimously endorsed this approach.

[72] There were 11 cases out of the sample of 37 where the Court cited international law. Only 8 of these cases could be reviewed in full, as three were in the process of being

75%, interveners cited international law in their submissions, in four of the eight cases, or 50%, the parties cited international law, and in two of the eight cases, or 25%, the Court referred to international law without the benefit of legal argument in this respect. While this is a small sample, it suggests that interveners are more likely than the parties in a case to place arguments concerning international law before the Court. This is consistent with Justice Major's 1999 comments about where interveners can be most useful to the Court—in presenting

> "comparative views of other national and international courts in constitutional litigation ... particularly in private actions where litigants lack the resources to do the research necessary to provide a comprehensive comparative brief. This provides an opportunity for interveners with specialized knowledge to complement the appeal."[73]

How useful has the Court found interveners' arguments concerning international law? A review of the eight cases in Table 2 indicates three categories of cases, each suggesting different results.

The first category of cases includes those where neither the parties nor interveners cited international law, but the Court did. In *Gordon* v. *Goertz*, the facta of the parties and the interveners were silent on international law. Nevertheless, L'Heureux Dubé J., in a concurring judgment, employed international law to support her interpretation of the best interests of the child and residence issues.[74] Similarly, in *Granovsky* v. *Canada*, neither the parties nor intervener cited international law, but the Court did so in its judgment to explain its differentiation between physical impairments and

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transferred to microfiche at the Supreme Court, and the facta were not otherwise available (*Lovelace*, *supra* note 56, *Delisle* v. *Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989 [hereinafter *Delisle*] and *Baker*, *ibid.*). Table 2 sets out the statistics for the remaining 8 cases.

[73] Mr. Justice John C. Major, *supra* note 5 at 27.

[74] *Gordon* v. *Goertz*, [1996] 2 S.C.R. 27 at paras. 87-88 [hereinafter *Goertz*], La Forest and Gonthier JJ. concurring, see Appendix 1 at iv, below, citing the League of Nations *Declaration of the Rights of the Child* (1924), the United Nations *Declaration of the Rights of the Child* (1959), the 1989 United Nations *Convention on the Rights of the Child*, and the *Hague Convention on the Civil Aspects of International Child Abduction.*

socially constructed limitations.[75] In these two cases, it is fair to conclude that the interveners did not have a direct impact on the Court's utilization of international law.

The second category of cases includes those where the parties did not cite international law, but interveners and the Court did. There are two cases in this category.

In *Egan*, neither of the parties relied upon international law in their factum. The intervener Equality for Gays and Lesbians Everywhere (EGALE) cited a number of international documents in support of its argument that sexual orientation should be recognized as a protected ground under section 15 of the *Charter*.[76] One of these, the European Parliament's *Resolution on Equal Rights for Homosexuals and Lesbians in the European Community*, was cited by a majority of the Court in finding in favour of this argument.[77] Another intervener, the Inter-faith Coalition on Marriage and the Family, cited international law to bolster its position that sexual orientation should not be recognized,[78] but these documents were not cited by the minority of the Court that adopted this position. *Egan* is thus a case where the arguments of one of the interveners appears to have influenced the decision of the Court, even though the Court did not refer to EGALE in this part of its decision.

Another case in the second category is *Winnipeg Child and Family Services* v. *G.(D.F.)*. In this case, the parties did not cite international law, but three of the interveners did. The Catholic Group for Health, Justice

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[75] *Granovsky* v. *Canada (Minister of Employment and Immigration)*, [2000] S.C.R. 703 at para. 34 [hereinafter *Granovsky*], Binnie J. for the Court, see Appendix 1 at viii, below, citing the World Health Organization's *International Classification of Impairments, Disabilities, and Handicaps: A Manual of Classification Relating to the Consequences of Disease* (1980), and the United Nations *Decade of Disabled Persons, 1983-1992: World Programme of Action concerning Disabled Persons*.

[76] *Egan*, *supra* note 20 (Intervener Egale's Factum at para. 7). EGALE also cited the United Nations *Proclamation and Guiding Principles for the International Year of the Family* (1994), and the United Nations *Vienna International Centre NGO Committee on the Family Guiding Principles on the Family*.

[77] *Egan*, *ibid*. at 601-602, Cory J. See Appendix 1 at iii, below.

[78] *Egan*, *ibid.* (Intervener Inter-Faith Coalition on Marriage and the Family's Factum at para. 41), citing the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

and Life relied on the preamble of the *Convention on the Rights of the Child* to argue that the fetus requires legal protection.[79] This argument was accepted by the dissenting justices, who cited the United Nations *Declaration of the Rights of the Child* (1959) for the same proposition.[80] While two other interveners in the case cited international law, the documents relied upon were not referred to by the Court.[81] It appears, though, that at least one of the interveners in the case had an impact on the Court's use of international law.

The third category of cases includes those where at least one of the parties and an intervener cited international law, as did the Court. There are four cases in this category.

In *Andrews*, McIntyre J., in dissent, referred to article 14 of the *European Convention on Human Rights* in analyzing the interplay between section 15 and section 1 of the *Charter*.[82] This approach was put forward by an intervener, the Attorney General of Nova Scotia, as well as the appellant Law Society of British Columbia.[83] The other party in the case, Andrews, relied on a decision of the Court of Justice of the European Communities to support the proposition that the requirement of citizenship

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[79] *Winnipeg Child and Family Service* v. *G. (D.F.)*, *supra* note 24 (Intervener The Catholic Group for Health, Justice and Life's factum at para. 11).

[80] *Winnipeg Child and Family Services* v. *G.(D.F.)*, *ibid.* at para. 119, Major and Sopinka JJ., in dissent, see Appendix 1 at v, below. The majority did not cite international law in its reasons for decision.

[81] See *Winnipeg Child and Family Services* v. *G. (D.F.)*, *ibid.* (Interveners Women's Health Clinic, Métis Women of Manitoba, Native Women's Transition Centre, and Manitoba Association of Rights and Liberties' factum at paras. 38-40), citing art. 25 of the *Universal Declaration of Human Rights*; art. 12 of the *International Covenant on Economic, Social and Cultural Rights*; Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Report of Canada Concerning the Rights Covered by Articles 10-15 of the International Covenant on Economic, Social and Cultural Rights* (1993), and the *Convention on the Elimination of all Forms of Discrimination Against Women*; *Winnipeg Child and Family Services* v. *G. (D.F.)*, *ibid.* (Intervener Association des Centres jeunesse du Québec's factum), citing the *Convention on the Rights of the Child*, the *Universal Declaration of Human Rights*, and the *Convention on the Elimination of all Forms of Discrimination Against Women*.

[82] *Andrews*, supra note 29 at 177, see Appendix 1 at i, below. The Court also referred to the 14th Amendment of the US Constitution in this regard.

[83] *Andrews*, *ibid*. (Intervener Attorney General of Nova Scotia's factum at para. 19); *Andrews*, *ibid*. (Appellant's factum at para. 13).

for lawyers is not justifiable.[84] This case was cited by La Forest J. in his concurring judgment.[85] LEAF was the only public interest intervener to refer to international law in its factum, arguing that international human rights documents should be used by the Court to decide upon analogous grounds under section 15 of the *Charter*.[86] While this point was not explicitly adopted by the Court, it did decide upon an approach to section 15 that allowed for the protection of both enumerated and analogous grounds.

In *Lavigne* v. *Ontario Public Service Employees Union*, Wilson J., in a minority judgment, distinguished a case of the European Human Rights Commission relied on by the appellant, Lavigne, to establish a freedom not to associate.[87] In a similar vein, the Canadian Labour Congress and Ontario Federation of Labour cited the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Labour Organization Convention No. 87*, all ratified by Canada, to argue that section 2(d) of the *Charter* should not be construed as encompassing the freedom not to associate.[88] While this is the position that was taken by Wilson J., she did not refer to these international treaties in support of this view.[89] La Forest J., for the plurality, cited article 20 of the *Universal Declaration of Human Rights* to buttress the finding that section 2(d) of the *Charter* includes the freedom not to associate.[90] This argument was put forward by Lavigne.[91] Thus the parties' arguments appear to have had more explicit influence than those of interveners in the use of international law in this case.

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[84] *Andrews*, *ibid*. (Respondents Mark David Andrews and Gorel Elizabeth Kinersly's factum at para. 69).

[85] *Andrews*, *ibid*. at 204, La Forest J., see Appendix 1 at i, below.

[86] *Andrews*, *ibid.* (Intervener Women's Legal Education And Action Fund's factum at para. 53).

[87] *Lavigne* v. *Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 at 255-266 [hereinafter *Lavigne*], see Appendix 1 at ii, below.

[88] *Lavigne*, *ibid.* (Interveners Canadian Labour Congress and the Ontario Federation of Labour's factum at para. 18).

[89] *Lavigne*, *ibid*., Wilson J. (L'Heureux-Dubé concurring), see Appendix 1 at ii, below.

[90] *Lavigne*, *ibid.* at 228.

[91] *Lavigne*, *ibid.* (Appelant's factum at para. 51).

In *Dunmore* v. *Ontario*, both the appellants (Dunmore and the United Food and Commercial Workers International Union) and the intervener Canadian Labour Congress relied on international law to argue that section 2(d) of the *Charter* should be interpreted so as to oblige the provincial government to include agricultural workers in its labour relations legislation.[92] A majority of the Court accepted this argument, and cited international law in support of this interpretation of section 2(d).[93] The Respondent Fleming Chicks also cited international law, arguing that section 15 of the *Charter* should not be interpreted to include occupational status as an analogous ground.[94] A majority of the Court did not deal with the section 15 issue, and in a concurring judgment, L'Heureux Dubé J. rejected the argument of the Respondent.[95] Overall, then, *Dunmore* is a case where both the arguments of the parties and the interveners appear to have influenced the Court's use of international law.

Finally, in *Gosselin* v. *Quebec*, the appellant Gosselin,[96] as well as a number of public interest interveners, cited international law to support an interpretation of sections 7 and 15 of the *Charter* and section 45 of the Quebec Charter that encompassed social and economic rights, including a positive obligation on governments to provide adequate levels of social

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[92] *Dunmore*, *supra* note 18 (Appelant's factum at paras. 98-99) citing the *International Labour Organization Convention (No. 11) concerning the Rights of Association and Combination of Agricultural Workers*; I.L.O. Case No. 1900, *Complaint Against the Government of Canada* (Ontario); *Dunmore*, *ibid*. (Intervener Canadian Labour Congress's factum at 9-10, 16, 20).

[93] *Dunmore*, *ibid.* at paras. 27, 41 (Bastarache J.), see Appendix 1 at ix, below, citing the *Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize*; the *Convention (No. 11) concerning the Rights of Association and Combination of Agricultural Workers; Convention (No. 141) concerning Organisations of Rural Workers and Their Role in Economic and Social Development*; Case No. 1900, Complaint against the Government of Canada (Ontario).

[94] *Dunmore*, *ibid*. (Respondent Fleming Chicks' factum at paras. 91-93), citing the *Universal Declaration of Human Rights.*

[95] *Dunmore*, *ibid*. at paras 166-170, Appendix 1 at ix, below. Justice L'Heureux Dubé did not rely on international law in her judgment.

[96] *Gosselin* v. *Quebec (Attorney General),* [2002] S.C.J. 84 [hereinafter *Gosselin*] (Appelant Louise Gosselin's factum), citing the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of the Child*.

assistance.[97] Three of the five members of the Supreme Court who wrote opinions in the case cited international law. For the majority, McLachlin C.J. distinguished the language of the *International Covenant on Economic, Social and Cultural Rights* and the *Universal Declaration of Human Rights* from the language of the Quebec Charter in finding that the latter document did not support the position of the Appellant.[98] LeBel J. also cited the Covenant in agreeing with the majority's interpretation of the Quebec Charter.[99] In contrast, L'Heureux Dubé J. found that the *International Covenant on Economic, Social and Cultural Rights* closely resembled section 45 of the Quebec Charter, and substantiated the arguments of the Appellant and interveners that this document protects an adequate standard of living.[100] Thus *Gosselin* is a case where the arguments of the parties and interveners found favour with some members of the Court.

There is a fourth category of cases as well. The Court did not cite international law in 26 out of the 37 cases involving the five most frequent interveners, but in several of these cases, interveners had made arguments on this basis.[101]

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[97] *Gosselin*, *ibid*. (Intervener Charter Committee on Poverty Issues' factum), citing the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *European Social Charter*, and several reports of international committees; *Gosselin*, *ibid*. (Intervener National Association of Women and the Law's factum), citing the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*; and a number of reports of international committees; *Gosselin*, *ibid.* (Intervener Rights and Democracy's factum).

[98] *Gosselin*, *ibid*. at para. 93, McLachlin C.J. for the majority, see Appendix 1 at ix, below.

[99] *Ibid*. at paras. 419-420. LeBel J. agreed with Bastarache J. (in dissent) that the Quebec legislation violated s. 15 of the *Charter*.

[100] *Ibid*. at para. 147, L'Heureux Dubé J., in dissent.

[101] See, for example, *Brooks* v. *Canada Safeway*, [1989] 1 S.C.R. 1219 [hereinafter *Brooks*], see Appendix 1 at i, below, where LEAF cited the Preamble to the *Convention on the Elimination of All Forms of Discrimination Against Women* (at para. 38 of its factum); *Weatherall* v. *Canada (Attorney General)*, [1993] 2 S.C.R. 872 [hereinafter *Weatherall*], see Appendix 1 at iii, where LEAF cited the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (at para. 37 of its factum); *Symes* v. *Canada*, [1993] 4 S.C.R. 695 [hereinafter *Symes*] (Appendix 1 at iii, below), *Thibaudeau*, *supra* note 17, see Appendix 1 at iii, below, with LEAF),

Overall, the analysis of these cases and the facta of the parties and interveners suggest that interveners are useful to the Court in presenting arguments on international law, not just in constitutional litigation, as envisioned by Justice Major, but in other areas as well.[102] It is interesting to see the reach of international law and rights discourse in this respect. At the same time, there have been many cases in the past where the Courts have not been receptive to arguments based on international law.

This may change in light of *Baker* v. *Canada (Minister of Citizenship and Immigration)*, where a majority of the Court found that international law is "a critical influence on the interpretation of the scope of the rights included in the *Charter*", and broadly envisioned the scope of international documents it would entertain in this regard. Even international human rights norms that have not been implemented or adopted by Canada, and are not strictly part of Canadian law, "may help inform the contextual approach to statutory interpretation and judicial review."[103]

Importantly, the Court seems more amenable to arguments based on international law since the *Baker* decision. Both in cases with,[104] and without interveners,[105] the Court has cited international law in several recent judgments. In many cases, the international materials referred to were not binding on the Court, and included treaties that had not been incorporated into Canadian law, and reports of United Nations and other

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Eldridge v. *B.C. (Attorney General)*, [1997] 3 S.C.R. 624 (Appendix 1 at v, below) and *New Brunswick (Minister of Health and Community Services)* v. *G.* [1999] 3 S.C.R. 46 (Appendix 1 at vii, below), where the Charter Committee on Poverty Issues cited the *International Covenant on Economic, Social and Cultural Rights*.

[102] For example, *Winnipeg Child and Family Services* v. *G.(D.F.)*, *supra* note 24 did not involve constitutional issues.

[103] *Baker*, *supra* note 71 at paras 69-70, L'Heureux Dubé J. for the majority. In a concurring judgment, Iacobucci and Cory JJ. disagreed with this approach, finding that only treaties ratified and then incorporated into Canadian law by implementing legislation should be used in interpreting domestic law (at paras. 79-80). See, however, *Suresh*, *supra* note 71, where the Court unanimously adopted the majority's approach from *Baker*.

[104] *Delisle*, *supra* note 71 (Appendix 1 at vii, below); *Granovsky*, *supra* note 75 (Appendix 1 at viii, below); *Lovelace*, *supra* note 56 (Appendix 1 at viii, below); *Dunmore*, *supra* note 17 (Appendix 1 at ix, below); *Gosselin*, *supra* note 96 (Appendix 1 at ix, below).

[105] See for example *Winnipeg Child and Family Services* v. *K.L.W.*, [2000] 2 S.C.R. 519; *Nova Scotia (Attorney General)* v. *Walsh*, 2002 SCC 83.

international bodies.[106] This should serve as encouraging evidence for intervener groups to continue, or to commence using international law in their submissions. At the same time, groups must take care that such arguments are not seen as "rhetorical", as there is some suggestion that members of the Court will continue to approach non-binding international law with caution.[107]

This leads to a discussion of the most frequent intervener groups and their use of international law. For some of the groups, such arguments are routine, and part of their litigation strategies. For example, the Charter Committee on Poverty Issues cited international law in all seven of its interventions in the selected areas from 1982 to 2002. Indeed, the group's mandate is to strengthen and promote economic and social rights and positive obligations under the *Charter* using international law. While the Court has not always been explicitly receptive to such submissions, the group views the success of its arguments in the long term, and notes that its systematic use of international law is beginning to bear some fruit. For example, the Charter Committee on Poverty Issues was one of the interveners present in the *Baker* case, and was influential in arguing the "significant normative force" of non-binding international law.[108]

LEAF cited international law in approximately 1/4 of its 17 interventions in family, labour and equality rights cases from 1982 to 2002.[109] In an interview with LEAF, it was said that the group is increasingly using

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[106] See for example, *supra* note 75, Appendix 1 at viii, below, citing the World Health Organization's *International Classification of Impairments, Disabilities, and Handicaps: A Manual of Classification Relating to the Consequences of Disease* (1980), and the United Nations, *Decade of Disabled Persons, 1983-1992: World Programme of Action concerning Disabled Persons*; *Lovelace*, *supra* note 56, see Appendix 1 at viii, below, citing United Nations Committee on Economic, Social and Cultural Rights Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada), E/C. 12/1/Add.31, 4 December 1998 (Iacobucci J. at para. 69); *Winnipeg Child and Family Services* v. *K.L.W.*, *ibid*., L'Heureux-Dubé J. for the majority at paras. 73, 81 and Arbour J. at para. 7, in dissent, McLachlin C.J. concurring, citing the *Convention of the Rights of the Child.*

[107] See D. Gambrill, "The 'problem' of international law for the SCC" *Law Times* (22 April 2002) at 5, citing Justice LeBel's 2002 speech at a *Charter* conference in Toronto.

[108] *Baker*, *supra* note 71 (Intervener Charter Committee on Poverty Issues's factum at para. 4).

[109] These cases are: *Andrews*, *Brooks*, *Weatherall*, and *Thibaudeau*, see Appendix 1, below.

international law in its facta, partly in response to its perception that the Court appears to be more interested in hearing such arguments. LEAF is of the view that comparative law work is also important, and has been even more active in this regard.[110]

The Canadian Civil Liberties Association has referred to international law in its facta, but this is not a strategy the group uses systematically. According to the Association, it is more inclined to make comparative law arguments.[111] The Council of Canadians with Disabilities is also a group which does not often cite international law in its arguments, but it does argue comparative law, particularly at the tribunal level.[112]

Thus, at least some of the most frequent intervener groups have played a significant role in the Court's use of international law, as have other interveners. Returning to the theme of this section, the broader conclusion can be drawn that interveners have had an impact on the Court's judgments. International law is an area where there has been dialogue between the Court and public interest groups, and to the extent that international law describes norms created by international bodies, the conversation widens to include those working at the international level.

CONCLUSION

My research shows that interveners have played a significant role at the Supreme Court of Canada in the last 20 years, both in sheer number, and on a more substantive level, both in "public" and "private" areas of law. Moreover, the processes, criteria and strategies employed by frequent interveners suggests that their work is carefully chosen and created, often

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[110] Interview with LEAF, *supra* note 14. Comparative law arguments were made in 12/ 17 of LEAF's interventions, or 70.6%.

[111] Interview with CCLA, *supra* note 14. For an international law example, see *Kmart Canada Ltd.*, *supra* note 25 (Intervener Canadian Civil Liberties Association's factum and *Allsco Building Products Ltd*. v. *U.F.C.W., Local 1288P*, [1999] 2 S.C.R. 1136 (Intervener Canadian Civil Liberties Association's factum at paras. 35-36) where the *European Convention on Human Rights and Fundamental Freedoms* is noted. For a comparative law example, see *Winnipeg Child and Family Services* v. *G.(D.F.)*, *supra* note 24 (Intervener Canadian Civil Liberties Association's Factum) citing several American and British cases.

[112] Interview with CCD, *supra* note 14. The CCD often intervenes in tribunal hearings such as those involving the Canadian Radio and Telecommunications Commission and the Canadian Transportation Agency.

in dialogue with other public interest groups and experts. In this sense, the conversation metaphor is an apt one, although the Court has not always listened to the extent the interveners would hope. The Court's willingness to entertain submissions based on international law is one area where there is promise for a strong and productive conversation with public interest groups into the future. It is also important to recognize that interveners from a broad range of perspectives have been present before the Court, and have made submissions based on international law. The critique that there is an elite "court party" shaping the Court's discourse in a particular direction is not supported by the evidence.

While the Court's determination to control its process and prevent the misuse of interventions is understandable, there are nevertheless actions that might be taken to render the participation of interveners more effective. Courts should recognize the selectivity of most interveners, and deny applications for leave to intervene only in cases where the groups are truly "piling on" and do not meet the criteria for such applications. It should also be understood that oral argument can be critical to allow interveners to expand upon and highlight their submissions, and to respond to questions and concerns from the bench. Placing restrictions on oral argument may hamper a full and constructive dialogue between the Court and interveners. If such restrictions are made, it would be helpful for the Court to provide meaningful reasons so that public interest groups can respond to its concerns in future cases. Similarly, the explicit recognition of interveners' submissions in judicial decisions would allow the influence of interveners to be assessed more readily. Another way of ensuring the effective participation of interveners is for the Court to consider requesting their presence when leading cases are to be decided. Lastly, the federal government should consider changing the parameters of the Court Challenges Program, so that interventions in cases involving provincial legislation can be funded. This will help to ensure that interveners can participate in the full range of issues where their expertise and contextual knowledge is useful to the courts.

Appendix 1: Equality, Family and Labour Law Cases at Supreme Court of Canada With Public Interest Intervener Participation, 1982-2002

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
1. *Canadian Union of Public Employees* v. *Nova Scotia (Labour Relations Board)*, [1983] 2 S.C.R. 311	L	Nova Scotia Federation of Labour	No	N/A	
2. *Ontario (Human Rights Commission)* v. *Simpson Sears*, [1985] 2 S.C.R. 536	L	Cdn Assn for the Mentally Retarded Coalition of Provincial Organizations of the Handicapped (COPOH) Canadian Jewish Congress	Yes (Canadian Association for the Mentally Retarded and Coalition of Provincial Organizations of the Handicapped)	N/A	COPOH – No
3. *Bhinder* v. *Canadian National Railway Co.*, [1985] 2 S.C.R. 561	L	Cdn Assn for the Mentally Retarded	No	N/A	
4. *E. (Mrs.)* v. *Eve*, [1986] 2 S.C.R. 388	F	Canadian Mental Health Association Consumer Advisory Committee of Canada Cdn Assn of the Mentally Retarded	No	N/A	
5. *Law Society British Columbia* v. *Andrews*, [1989] 1 S.C.R. 143	E, L	Federation of Law Societies of Canada Women's Legal Education and Action Fund (LEAF) COPOH Canadian Assn of University Teachers Ontario Confederation of University Faculty Associations	Yes (Canadian Assn. of University Teachers and Ontario Confederation of University Faculty Associations)	Yes (European Convention on Human Rights)	LEAF – Yes COPOH – No L.S.B.C. – Yes Andrews– No A.G.N.S.– Yes

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
6. *Brooks* v. *Canada Safeway*, [1989] 1 S.C.R. 1219	L	LEAF	No	N/A	LEAF – Yes
7. *Janzen* v. *Platy Enterprises*, [1989] 1 S.C.R. 1252	L	LEAF	No	N/A	LEAF – No
8. *Reference re: Workers' Compensation Act*, 1983 (Nfld), [1989] 1 S.C.R. 922	E, L	Canadian Labour Congress (CLC) Canadian National Railway Company Canadian Manufacturers'' Assn General Bakeries Ltd.	No	N/A	
9. *Tremblay* v. *Daigle*, [1989] 2 S.C.R. 530	F	Canadian Abortion Rights Action League LEAF Canadian Civil Liberties Association (CCLA) Campaign Life Coalition Canadian Physicians for Life Association des médecins du Québec pour le respect de la vie REAL Women	Yes (Canadian Physicians for Life and Association des médecins du Québec pour le respect de la vie)	N/A	LEAF – No CCLA – No
10. *Tétreault-Gadoury* v. *Canada (Employment and Immigration Commission)*, [1991] 2 S.C.R. 22	E, L	Cuddy Chicks Limited United Food and Commercial Workers International Union, Local 175	No	N/A	
11. *Lavigne* v. *Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211	L	Canadian Labour Congress (CLC) Ontario Federation of Labour National Union of Provincial Government Employees Confederation of National Trade Unions Canadian Civil Liberties Association (CCLA)	Yes (Canadian Labour Congress and Ontario Federation of Labour)	Yes (Universal Declaration of Human Rights; European Convention on Human Rights)	CLC/OFL – Yes CCLA – No Lavigne – Yes OPSEU – No

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
12. *Schachter* v. *Canada*, [1992] 2 S.C.R. 679	E, F	LEAF Minority Advocacy Rights Council	No	N/A	LEAF – No
13. *Central Okanagan School District No. 23* v. *Renaud*, [1992] 2 S.C.R. 970	L	Seventh-day Adventist Church in Canada Canadian Labour Congress (CLC) Disabled People for Employment Equity Persons United for Self Help in Ontario (P.U.S.H.) Ontario	Yes (Disabled People for Employment Equity and Persons United for Self Help in Ontario (P.U.S.H.) Ontario)		
14. *Moge* v. *Moge*, [1992] 3 S.C.R. 813	F	LEAF	No	N/A	LEAF – No
15. *Canada (Attorney General)* v. *Mossop*, [1993] 1 S.C.R. 554	L, F	Equality for Gays and Lesbians Everywhere (EGALE) Canadian Rights and Liberties Federation National Association of Women and the Law (NAWL) Canadian Disability Rights Council National Action Committee on the Status of Women (NAC) Focus on the Family Salvation Army REAL Women Evangelical Fellowship of Canada Pentecostal Assemblies of Canada	Yes (EGALE, Canadian Rights and Liberties Federation, NAWL, Canadian Disability Rights Council and NAC) (Focus on the Family, Salvation Army, REAL Women, Evangelical Fellowship of Canada, Pentecostal Assemblies of Canada)	N/A	
16. *Weatherall* v. *Canada (Attorney General)*, [1993] 2 S.C.R. 872	E	COPOH LEAF Minority Advocacy and Rights Council	No	N/A	LEAF – Yes

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
17. *Young* v. *Young*, [1993] 4 S.C.R. 3	F	Law Society of British Columbia Seventh-day Adventist Church in Canada	No	Yes (Convention on the Rights of the Child)	
18. *P.(D.)* v. *S.(C.)*, [1993] 4 S.C.R. 141	F	Seventh-day Adventist Church in Canada	No	Yes (Convention on the Rights of the Child)	
19. *Symes* v. *Canada*, [1993] 4 S.C.R. 695	E, F	Charter Committee on Poverty Issues (CCPI) Canadian Bar Association	No	N/A	CCPI – yes
20. *Native Women's Assn. of Canada* v. *Canada*, [1994] 3 S.C.R. 627	E	Inuit Tapirisat of Canada Assembly of First Nations	No	N/A	
21. *Egan* v. *Canada*, [1995] 2 S.C.R. 513	E, F	EGALE Metropolitan Community Church of Toronto Inter-Faith Coalition on Marriage and the Family Canadian Labour Congress (CLC)	No	Yes (Resolution on Equal Rights for Homosexuals and Lesbians in the European Community, European Parliament)	CLC – No EGALE – Yes Interfaith – Yes Parties – No
22. *Thibaudeau* v. *Canada*, [1995] 2 S.C.R. 627	E, F	Support and Custody Orders for Priority Enforcement (SCOPE) Charter Committee on Poverty Issues Federated Anti-Poverty Groups of British Columbia National Action Committee on the Status of Women (NAC) LEAF	Yes (Charter Committee on Poverty Issues, Federated Anti-Poverty Groups of B.C., NAC, and LEAF)	N/A	CCPI / LEAF coalition – Yes
23. *Ross* v. *New Brunswick School District No. 15*, [1996] 1 S.C.R. 825	L	League for Human Rights of B'Nai Brith Canada	No	N/A	CCLA – No

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
		Canadian Civil Liberties Association (CCLA) Canadian Association of Statutory Human Rights Agencies			
24. *Gordon* v. *Goertz*, [1996] 2 S.C.R. 27	F	LEAF	No	Yes (Convention on the Civil Aspects of International Child Abduction; Convention on the Rights of the Child; Declaration of the Rights of the Child (1924), Declaration on the Rights of the Child (1959)	LEAF – No Parties – No
25. *Battlefords and District Co-operative Ltd*. v. *Gibbs*, [1996] 3 S.C.R. 566	L	Council of Canadians with Disabilities (CCD) Canadian Mental Health Association	No	N/A	
26. *Adler* v. *Ontario*, [1996] 3 S.C.R. 609	E	Ontario Multi-Faith Coalition for Equity in Education Ontario Federation of Independent Schools Ontario Public School Boards' Assn. Canadian Civil Liberties Association (CCLA)	No	N/A	CCLA – No

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
27. *Eaton* v. *Brant County Board of Education*, [1997] 1 S.C.R. 241	E	Canadian Foundation for Children, Youth and the Law Learning Disabilities Association of Ontario Ontario Public School Boards' Assn. Down Syndrome Assn. of Ontario Council of Canadians with Disabilities (CCD) Confédération des organismes de personnes handicapées du Québec Canadian Assn. for Community Living People First of Canada Easter Seal Society	Yes (Council of Canadians with Disabilities, Confédération des organismes de personnes handicapées du Québec, Canadian Association for Community Living, People First of Canada)	N/A	
28. *Benner* v. *Canada (Secretary of State)*, [1997] 1 S.C.R. 358	E	The Federal Superannuates National Association	No	N/A	
29. *Eldridge* v. *B.C. (Attorney General)*, [1997] 3 S.C.R. 624	E	LEAF Disabled Women's Network (DAWN) Canada Charter Committee on Poverty Issues (CCPI) Canadian Association of the Deaf Canadian Hearing Society Council of Canadians with Disabilities (CCD)	Yes (LEAF and DAWN Canada), (Canadian Association of the Deaf, Canadian Hearing Society and Council of Canadians with Disabilities)	N/A	CCPI – Yes LEAF coalition – No CCD coalition – No
30. *L.S.* v. *C.S.*, [1997] 3 S.C.R. 1003	F	Seventh-day Adventist Church in Canada	No	N/A	

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
31. *Winnipeg Child and Family Services (Northwest Area)* v. *G.(D.F.)*, [1997] 3 S.C.R. 925	F	Evangelical Fellowship of Canada Christian Medical and Dental Society Catholic Group for Health, Justice and Life Alliance for Life Association des Centres jeunesse du Quebec Canadian Civil Liberties Association (CCLA) Canadian Abortion Rights Action League LEAF Women's Health Clinic Métis Women of Manitoba Native Women's Transition Centre Manitoba Association of Rights and Liberties	Yes (Evangelical Fellowship of Canada and the Christian Medical and Dental Society), (Women's Health Clinic, Métis Women of Manitoba , Native Women's Transition Centre and Manitoba Association of Rights and Liberties)	Yes (Declaration of the Rights of the Child (1959))	LEAF – No CCLA – No Parties – No The Catholic Group for Health, Justice and Life – Yes Women's coalition – Yes Association des Centres jeunesse du Quebec – Yes
32. *Vriend* v. *Alberta*, [1998] 1 S.C.R. 493	E , L	Alberta Civil Liberties Association EGALE LEAF Foundation for Equal Families Canadian Labour Congress (CLC) Canadian Bar Association -- Alberta Canadian Association of Statutory Human Rights Agencies (CASHRA) Canadian AIDS Society Alberta and Northwest	Yes (Evangelical Fellowship of Canada and Focus on the Family)	N/A	LEAF – No CCLA – No

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
		Conference of the United Church of Canada Canadian Jewish Congress Christian Legal Fellowship Alberta Federation of Women United for Families Evangelical Fellowship of Canada			
33. *Vancouver Society of Immigrant and Visible Minority Women* v. *M.N.R.*, [1999] 1 S.C.R. 10	E	Minority Advocacy and Rights Council Canadian Ethnocultural Council Centre for Research Action on Race Relations Canadian Centre for Philanthropy	Yes (Minority Advocacy and Rights Council, Canadian Ethnocultural Council and Centre for Research Action on Race Relations)	N/A	
34. *M.* v. *H.*, [1999] 2 S.C.R. 3	E, F	The Foundation for Equal Families LEAF EGALE United Church of Canada Evangelical Fellowship of Canada Ontario Council of Sikhs Islamic Society of North America Focus on the Family REAL Women	Yes (Evangelical Fellowship of Canada, Ontario Council of Sikhs, Islamic Society of North America and Focus on the Family)	N/A	
35. *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817	F	The Canadian Council of Churches Canadian Foundation for Children, Youth and the Law Defence for Children International-Canada Canadian Council for Refugees Charter Committee on Poverty Issues	Yes (the Canadian Foundation for Children, Youth and the Law, the Defence for Children International-Canada, and the Canadian Council for Refugees)	Yes (Convention on the Rights of the Child; Declaration of the Rights of the Child (1959))	CCPI – Yes Parties – Yes

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
36. *Delisle* v. *Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989	L, E	The Public Service Alliance of Canada Canadian Police Association Ontario Teachers' Federation Canadian Labour Congress (CLC)	No	Yes (Convention (no. 87) Concerning Freedom of Association and Protection of the Right to Organize; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Universal Declaration of Human Rights	
37. *U.F.C.W., Local 1518* v. *KMart Canada Ltd.*, [1999] 2 S.C.R. 1083	L	Canadian Labour Congress (CLC) Canadian Civil Liberties Association (CCLA) Retail Council of Canada Coalition of B.C. Businesses Pepsi-Cola Canada Beverages (West)	No	N/A	CCLA – Yes
38. *Allsco Building Products Ltd.* v. *U.F.C.W., Local 1288P*, [1999] 2 S.C.R. 1136	L	Retail Council of Canada Canadian Labour Congress (CLC) Canadian Manufacturers' Association Canadian Civil Liberties Association (CCLA) Pepsi-Cola Canada Beverages (West)	No	N/A	CCLA – Yes

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
39. *Corbiere* v. *Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203	E	Aboriginal Legal Services of Toronto Congress of Aboriginal Peoples Lesser Slave Lake Indian Regional Council Native Women's Association of Canada United Native Nations Society of British Columbia	No	N/A	
40. *British Columbia (Public Service Employee Relations Commission)* v. *BCGSEU*, [1999] 3 S.C.R. 3	L	LEAF, DAWN Canada Canadian Labour Congress (CLC)	Yes (LEAF, DAWN Canada Canadian Labour Congress)	N/A	LEAF/DAW N/CLC – No
41. *New Brunswick (Minister of Health and Community Services)* v. *G. (J.)*, [1999] 3 S.C.R. 46	E, F	Canadian Bar Association Charter Committee on Poverty Issues LEAF National Association of Women and the Law DAWN Canada Watch Tower Bible and Tract Society of Canada	Yes (LEAF, NAWL, and DAWN Canada)	N/A	CCPI – Yes LEAF coalition – No
42. *Kovach* v. *British Columbia (Workers' Compensation Board)*, [2000] 1 S.C.R. 55	L	United Association of Injured and Disabled Workers Vernon Injured Workers Support Group Canadian Injured Workers' Prince George Northern Vancouver Island Brain Trauma Society Ontario Network of Injured Workers' Groups	Yes (all)	N/A	

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
43. *Granovsky* v. *Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703	E, L	Council of Canadians with Disabilities (CCD)	No	Yes (UN Decade of Disabled Persons, 1983-1992: World Programme of Action concerning Disabled Persons; World Health Organization, International Classification of Impairments, Disabilities, and Handicaps)	CCD – No Parties – No
44. *Lovelace* v. *Ontario*, [2000] 1 S.C.R. 950	E	Council of Canadians with Disabilities (CCD) Mnjikaning First Nation Charter Committee on Poverty Issues (CCPI) Congress of Aboriginal Peoples Native Women's Association of Canada Métis National Council of Women	No	Yes (Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada), December 1998)	CCPI – Yes CCD – No
45. *Little Sisters Book and Art Emporium* v. *Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120	E	Canadian AIDS Society Canadian Civil Liberties Association (CCLA) Canadian Conference of the Arts EGALE Equality Now PEN Canada LEAF	No	N/A	CCLA – No LEAF – No

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
46. *Van de Perre* v. *Edwards*, [2001] 2 S.C.R. 1014	F	The African Canadian Legal Clinic Association of Black Social Workers Jamaican Canadian Association	Yes (African Canadian Legal Clinic, Association of Black Social Workers, Jamaican Canadian Association)	N/A	
47. *Boston* v. *Boston*, [2001] 2 S.C.R. 413	F	LEAF	No	N/A	LEAF – No
48. *Therrien (Re)*, [2001] 2 S.C.R. 3	E	Office des droits des détenus Association des services de réhabilitation sociale du Québec	Yes (Office des droits des détenus and the Association des services de réhabilitation sociale du Québec)	N/A	
49. *Dunmore* v. *Ontario (Attorney General)*, [2001] 3 S.C.R. 1016	L, E	Canadian Labour Congress (CLC) Labour Issues Coordinating Committee	No	Yes (Convention (No. 11) concerning the Rights of Association and Combination of Agricultural Workers; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize; Convention (No. 141) concerning Organisations of Rural Workers and Their Role in Economic and Social Development)	CLC – Yes Dunmore – Yes Ontario – No LICC – No.

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
50. *R.* v. *Advance Cutting & Coring Ltd.*, [2001] 3 S.C.R. 209	L	Commission de la construction du Québec, Centrale des syndicats démocratiques, Confédération des syndicats nationaux, Conseil provincial du Québec des métiers de la construction International, Fédération des travailleurs du Québec, Canadian Coalition of Open Shop Contracting Associations and Canadian Office of the Building Construction Trades Department, AFL-CIO	Yes (Centrale des syndicats démocratiques (CSD-Construction), Confédération des syndicats nationaux (CSN-Construction) and Conseil provincial du Québec des métiers de la construction (International))	N/A	
51. *Lavoie* v. *Canada*, [2002] 1 S.C.R. 769	E, L	Center for Research-Action on Race Relations	No	Yes (International Covenant on Civil and Political Rights; Universal Declaration of Human Rights)	
52. *RWDSU, Local 558* v. *Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156	L	Canadian Labour Congress (CLC) Canadian Civil Liberties Association (CCLA)	No	N/A	
53. Berry v. Pulley, [2002] 2 S.C.R. 493	L	Canadian Labour Congress (CLC)	No	N/A	

Case	*Subject Area*	*Interveners*	*Coalition*	*International law in decision*	*International law in facta*
54. *Gosselin* v. *Quebec (Attorney General)*, [2002] S.C.J. 84	E	Rights and Democracy Commission des droits de la personne et des droits de la jeunesse NAWL Charter Committee on Poverty Issues (CCPI) Canadian Association of Statutory Human Rights Agencies (CASHRA)	No	Yes (International Covenant on Economic, Social and Cultural Rights; Universal Declaration of Human Rights)	CCPI – Yes Gosselin – Yes Quebec – No Rights and Democracy, NAWL, Commission des droits – Yes
55. *Sauvé* v. *Canada (Chief Electoral Officer)*, 2002 SCC 68	E	Canadian Association of Elizabeth Fry Societies John Howard Society of Canada British Columbia Civil Liberties Association Aboriginal Legal Services of Toronto Canadian Bar Association	Yes (Canadian Association of Elizabeth Fry Societies and John Howard Society of Canada)	Yes (European Convention on Human Rights; International Covenant on Civil and Political Rights)	