

COURT OF APPEAL FOR ONTARIO

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT
Appellants

and

THE LAW SOCIETY OF UPPER CANADA
Respondent

**FACTUM OF THE PROPOSED INTERVENER
THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA**

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PART I – STATEMENT OF FACTS

1. The Association for Reformed Political Action Canada (“ARPA Canada”) seeks leave to intervene in this appeal of the July 2, 2015 decision of the Divisional Court of Ontario which upheld the Law Society of Upper Canada’s (“LSUC”) decision to refuse accreditation of Trinity Western University’s (“TWU”) proposed Law School and to refuse to admit its graduates to the practice of law in Ontario.
2. ARPA Canada seeks leave to intervene in these proceedings as a friend of the Court.
3. One of the questions before the Divisional Court of Ontario was whether, as a result of TWU’s Community Covenant, TWU’s graduates were disqualified from practicing law in Ontario. The LSUC concluded that because of the Community Covenant, and on the basis of TWU students’ stated religious beliefs on marriage and sexuality that TWU Law School graduates would not be qualified to practice law in Ontario and the Divisional Court of Ontario upheld this conclusion.
4. While the parties will make arguments on further issues, it is these points that ARPA Canada’s submissions will focus on, should leave be granted.
5. ARPA Canada has a strong interest in these proceedings. This Court’s decision in this appeal may significantly impact the fundamental freedoms of all Canadians and, in particular, the fundamental freedoms of ARPA Canada’s constituency. These proceedings impact the individual Reformed Christian who wants to engage in the public sphere. These proceedings impact the Reformed Christian churches. And these proceedings impact the Reformed Christian communities running independent Christian schools.

PART II – QUESTIONS IN ISSUE

6. The sole issue raised by this motion is whether ARPA Canada should be granted leave to intervene in this appeal as a friend of the Court.

PART III – ARGUMENT

The Test on a Motion for Leave to Intervene

7. Rule 13.03(1) of the *Rules of Civil Procedure* gives the Court broad jurisdiction to grant leave to intervene to a person who is not a party to the proceeding.
8. The *Rules* offer two categories of intervention: as an added party (Rule 13.01); or as a friend of the Court (Rule 13.02). ARPA Canada seeks to intervene in these proceedings as a friend of the Court.
9. The test for intervention under Rules 13.01 and 13.02 is explained by the Ontario Court of Appeal in *Bedford v. Canada (Attorney General)*. One of at least three criteria must be met:
 - a) The intervenor has a real substantial and identifiable interest in the subject matter of the proceedings;
 - b) The intervenor has an distinct and important perspective; or
 - c) The intervenor is a well-recognized group with special expertise and a broadly identifiable membership base.

Bedford et al. v. Canada (Attorney General) 98 O.R. (3d) 792, 2009 ONCA 669 (CanLii) at para. 2 [“*Bedford*”], **Book of Authorities of the Association for Reformed Political Action (ARPA) Canada (“ARPA Authorities”)**, TAB 1.

10. Additionally, the case of *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd.* lays out an overarching principle concerning intervenors:

Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd., (1990), 74 O.R. (2d) 164, [1990] O.J. No. 1378, 1990 CanLii 6886 (Ont. CA) at para. 10 [“*Peel*”], *ARPA Authorities*, TAB 2.

11. In cases involving *Charter* issues, greater latitude is given in the admission of interveners because the Court recognizes that such cases involve a greater public interest, and situations where it is important to have a broad range of perspectives before the Court. A proposed intervener in a *Charter* case however, must still demonstrate that it has a direct interest in and can make a useful contribution to the proceeding.
12. In summary, a proposed intervener will only be granted leave to intervene if it can demonstrate that:
 - a) it will make a useful and unique contribution to the argument,
 - b) without causing injustice to the parties,
 - c) while demonstrating an interest in the proceedings.

STAGE 1: Will ARPA Canada’s submissions be useful and unique?

13. Without intending to limit the range of submissions that it might wish to make, ARPA Canada intends to advance the following points:
 - a) Section 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) demands that all citizens have equal access to the public square without discrimination and, in particular, without discrimination on the basis of religion;
 - b) The July 2, 2015 decision of the Divisional Court of Ontario upholds conduct of the Law Society of Upper Canada (“LSUC”) which constitutes unlawful discrimination on the basis of religion against students attending Trinity Western University (“TWU”) thus violating s. 15 of the *Charter*;

- c) If left unchallenged, the decision of the Divisional Court of Ontario and the actions of the LSUC represent a very serious threat to the equality rights of Canadians who hold to a similar religious worldview as those associated with TWU;
- d) When section 15 of the *Charter* is interpreted in a way that requires the LSUC to discriminate against graduates of TWU, such an interpretation unnecessarily and severely limits and restricts the section 15 rights of individual members of the TWU community;
- e) When section 15 of the *Charter* is interpreted in a way that requires the LSUC to discriminate against graduates of TWU, such an interpretation also unnecessarily and severely limits and restricts the section 2(a) and section 2(d) *Charter* rights of members of the TWU community in particular and of all Canadians;
- f) Such an interpretation of section 15 skews the balancing of rights to such an extent as to make any balance almost non-existent;
- g) Section 15 of the *Charter* is intricately linked with, and must be interpreted in light of, the section 2(a) right to freedom of religion and the section 2(d) right to freedom of association; and,
- h) Engaging in religious communal enterprise must be vigorously protected within a pluralistic society. This type of religious association has been improperly labelled as “unlawful discrimination” and/or “homophobia”. Such labels demonstrate ignorance and/or contempt for well-established

Charter principles and must be rejected.

14. ARPA Canada's submissions will be useful because they will provide a different perspective on the social, philosophical and constitutional issues before the Court.
15. ARPA Canada will bring the perspective of distinct religious communities from across Canada to the Court, communities for whom Christian identity, Christian education and Christian moral lifestyle standards are very important.
16. ARPA Canada's perspective will be different from that of the Respondents. ARPA Canada's submissions will likely differ from those of the Applicants and of the other proposed Intervenors, as per the proposed submissions above.
17. In short, ARPA Canada's perspective on the issues is unique. ARPA Canada respectfully submits that this Court will find its submissions beneficial.

STAGE 2: Will ARPA Canada's proposed intervention unduly delay the proceedings or cause prejudice to a party in the proceedings?

Undue delay

18. ARPA Canada has intervened before other Courts including the Supreme Court of Canada in the past and is mindful of the role of an intervener.
19. ARPA Canada will coordinate with other interveners to avoid repetition and duplication of arguments and will abide by the schedule set by the Court.
20. ARPA Canada will limit itself to legal arguments and will not file any affidavit material. ARPA Canada's proposed intervention will therefore not unduly delay the proceedings.

Prejudice to a party

21. ARPA Canada seeks only to assist the Court and represent the concerns of its constituency.

ARPA Canada will not seek to introduce new evidence, raise new issues or broaden the scope of the proceedings. ARPA Canada's proposed intervention will therefore not prejudice any party.

STAGE 3: Does ARPA Canada have an interest in the subject of the proceeding?

22. In determining whether or not a proposed intervener has a sufficient interest in the proceedings, the Court considers a number of factors. Three factors may include:

- a) The intervener has a particular interest in the subject matter of the proceeding;
- b) The intervener may be adversely affected by a judgment in the proceeding; or
- c) The intervener advocates in the public interest.

Rules 13.01(1)(a) and 13.01(1)(b), *Rules of Civil Procedure*, R.R.O. 1990, REGULATION 194.

a) ARPA Canada's particular interest in the subject of the proceeding

23. ARPA Canada is a national association assisting thousands of Reformed Christian individuals and communities as they seek to participate in the public square. ARPA Canada remains the primary means through which many Reformed Christians engage in social and political engagement in their communities, provinces, and in this nation. ARPA Canada directly engages with approximately 150 congregations and from time to time interacts with over 300 independent Christian schools.

24. ARPA Canada therefore represents the interests of thousands of deeply religious Canadians, hundreds of religious communities and dozens of religious institutions and therefore has a direct interest in the issues being litigated before the Court.

25. As an organization seeking to defend the *Charter's* section 15 right to equal treatment under the law on the basis of religion, ARPA Canada and those communities they engage have a legitimate interest in this case. ARPA Canada's constituents are affected by cases that raise issues about the unequal treatment on the basis of religious belief. The rights of religious individuals and communities are directly implicated in this case.

b) ARPA Canada may be adversely affected by the outcome of the proceeding

26. If the Divisional Court of Ontario's decision upholding the LSUC's decision not to license TWU Law School graduates to practice law on the sole basis of their religious beliefs is allowed to stand, ARPA Canada and its constituents will be adversely affected by the outcome of the proceedings.

27. All of the 150 Reformed communities with whom ARPA Canada engages with share TWU's beliefs on the issue of marriage and sexuality. If those beliefs preclude a Reformed Christian from the practice of law, what precedent is set for other professions? Indeed, every single Canadian who shares TWU's beliefs on the religious definition of marriage and sexuality, regardless of their own religious affiliation, may be adversely affected by the outcome of this proceeding.

28. If the Divisional Court of Ontario's decision upholding the LSUC's decision is allowed to stand, the graduates of other Christian post-secondary (and perhaps even secondary and elementary) educational institutions may be barred from entering particular professions.

c) ARPA Canada's intervention is also in the public interest

29. ARPA Canada represents the interests of thousands of Reformed Christians in

Canada, all of whom are members of approximately 150 Reformed Christian churches from seven different denominations. This segment of society comprises an important, though relatively small, minority religious group in Canada. In addition, in this intervention, ARPA Canada will also be able to speak to the interests of over 300 independent Christian school communities across the country.

30. This uniquely positions ARPA Canada to be a beneficial contributor to this Honourable Court's deliberations. ARPA Canada can speak intimately about the concerns and realities of religious life for these Reformed communities. Furthermore, these microcosms of religious life can serve as illustrations of many other religious communities from all kinds of different backgrounds. By advocating for the rights and interests of Reformed Christian communities, ARPA Canada will be advocating for the rights and interests of other minority religious communities.
31. As the outcome of this appeal will impact the *Charter* rights of not only the Reformed Christian communities in Canada but of all Canadians, an intervention by ARPA Canada is in the public interest. ARPA Canada's familiarity with the *Charter's* fundamental freedoms, especially as it can be applied to distinct religious communities within Canada can be a useful asset to this Court's deliberations.
32. In the context of public interest litigation, the Nova Scotia Court of Appeal, citing Howden J. from *R. v. Lepage* ([1994] O.J. No. 1305 (Ont. Gen. Div.)), stated: "It is clear to me that for constitutional issues such as these to receive proper consideration, different perspectives and argument are certainly required".

A.B. v. Bragg Communications Inc., 2010 NSCA 70, at para. 17 *ARPA Authorities*, TAB 3.

33. This Court's decision in respect of this appeal will have a significant national impact on the *Charter's* section 15 freedom of all Canadians, not only the parties to this litigation. ARPA Canada's expertise and unique perspective will enable it to present different perspectives and arguments on these important constitutional questions.

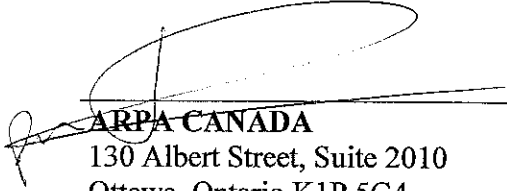
PART IV – SUBMISSIONS REGARDING COSTS

34. ARPA Canada submits that all parties bear their own costs of this motion. If leave to intervene is granted, ARPA Canada will seek no order as to costs and will ask that no award of costs be made against them.

PART V – ORDER SOUGHT

35. ARPA Canada seeks an order granting it leave to intervene in this appeal, permission to file a factum of no more than 10 pages and make oral arguments of no more than 10 minutes at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of November 2015.


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PART VI – TABLE OF AUTHORITIES

CASES	PARAGRAPHS CITED
<i>Bedford et al. v. Canada (Attorney General)</i> 98 O.R. (3d) 792, 2009 ONCA 669 (CanLii)	10
<i>Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd.</i> , (1990), 74 O.R. (2d) 164, [1990] OJ No. 1378 (Ont. CA)	1, 12
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PART VII – STATUTORY AUTHORITIES

Rules of Civil Procedure, R.R.O. 1990, REGULATION 194

LEAVE TO INTERVENE AS ADDED PARTY

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1.

LEAVE TO INTERVENE IN DIVISIONAL COURT OR COURT OF APPEAL

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (1); O. Reg. 292/99, s. 4; O. Reg. 186/10, s. 2.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1.

TRINITY WESTERN UNIVERSITY et al.

Applicants

and

THE LAW SOCIETY OF UPPER CANADA

Respondent

Court File No. 250/14

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Proceedings commenced at Toronto

**FACTUM OF THE PROPOSED INTERVENER,
THE ASSOCIATION FOR REFORMED POLITICAL
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