

COURT OF APPEAL FOR ONTARIO

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Appellants

and

THE LAW SOCIETY OF UPPER CANADA

Respondent

**MOTION RECORD OF THE PROPOSED INTERVENER,
THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA**

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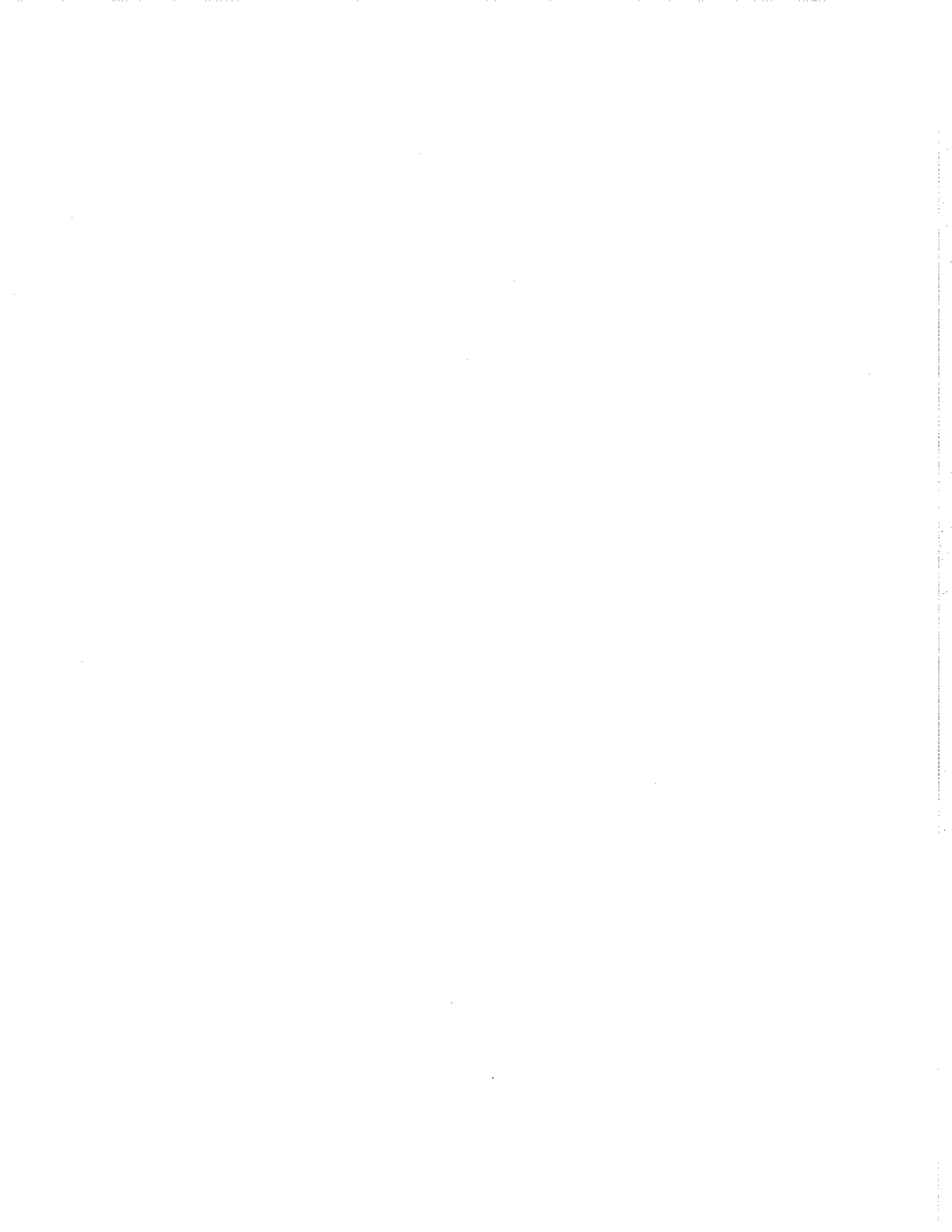
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BETWEEN:

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**NOTICE OF MOTION OF THE ASSOCIATION FOR REFORMED POLITICAL
ACTION (ARPA) CANADA**

The Association for Reformed Political Action (ARPA) Canada (“ARPA Canada”) (the “Proposed Intervener”) will make a motion to the Court on December 11, 2015 at 10:00 a.m. or soon after that time as the motion can be heard, at 130 Queen Street West, Toronto, Ontario M5H 2N5.

PROPOSED METHOD OF HEARING

1. The motion is to be heard orally.

THE MOTION IS FOR:

2. An Order granting ARPA Canada leave to intervene as friends of the Court pursuant to Rules 13.02 and 13.03(2) of the *Rules of Civil Procedure* in the Appeal by Trinity Western University (“TWU”) and Brayden Volkenant of the Order of the Divisional Court dated July 2, 2015;
3. An Order granting ARPA Canada leave to file a factum of no more than 10 pages;

- 4. An Order granting ARPA Canada leave to make oral arguments of no more than 10 minutes at the hearing of this appeal; and,
- 5. Such further or other Order that this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

- 6. These proceedings raise matters which will have a profound impact on Reformed Christians and their communities in Canada. These matters transcend the immediate interest of the parties.
- 7. ARPA Canada is a not-for-profit and non-partisan organization devoted to educating, equipping, and assisting members of Canada’s Reformed churches as they seek to participate in the public square. Reformed church communities are distinct from the larger and more well-known branches of Christianity (Evangelical, Mainline, Roman Catholic and Orthodox).
- 8. Since 2007, ARPA Canada has become the primary means through which many Reformed Christians engage in social and political engagement. ARPA Canada currently directs its mission to the following church denominations, composed of approximately 150 congregations:
 - a. Canadian Reformed Churches
 - b. United Reformed Churches
 - c. Free Reformed Churches
 - d. Heritage Reformed Churches
 - e. Netherlands Reformed Congregations
 - f. Reformed Presbyterian Churches
 - g. L’Église Réformée du Québec (The Reformed Church of Québec)

- 9. ARPA Canada also directs its mission towards independent Christian schools with regular presentations and updates to students and parents. In response to concerns over

the independence of Christian education, ARPA Canada developed and became the organizing member of the Association for Christian Educators and Schools (“ACES Canada”). ACES Canada is a national association comprised of six regional organizations who collectively represent three hundred and thirteen (313) confessional, independent/private parent-run elementary and secondary schools and eleven (11) post-secondary confessional educational institutions in Canada.

10. There is a real and wide-spread concern among the Reformed church communities generally that legal developments are making it difficult or even impossible to apply their faith to public life and even to their own communal/corporate lives. The case before this Honourable court is an example of the types of recent legal developments causing grave concern among Reformed Christian communities. ARPA Canada can bring their perspectives and concerns before the Court, which it submits would be helpful to the Court in its deliberations concerning the extremely important and fundamental issues raised in these proceedings.
11. ARPA Canada has made submissions to provincial and federal governments in Canada on broad issues such as freedom and liberty, and on more focused issues like early childhood education, euthanasia, abortion, and budget recommendations. Of particular interest to the case at bar, ARPA Canada presented a paper at the Ontario Human Rights Commission’s community dialogue on creed, resulting in a paper about religion and association published in Canadian Diversity Journal.
12. The effect of this Court’s ruling in these proceedings will have an impact beyond the interests of the immediate parties to the proceedings.

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13. ARPA Canada has a legitimate concern and interest in the outcome of these proceedings. Members of the various Reformed Christian communities across Canada have a direct interest in the legal, public policy and constitutional issues that have been raised in these proceedings as those issues will impact them individually and communally.
 14. The fundamental rights of all Canadians, but especially those with orthodox views on certain social issues, may be adversely affected by the outcome of these proceedings.
 15. ARPA Canada proposes to advance submissions at the hearing of this application that will be relevant to the proceedings, useful to the Court, and different from those of the parties.
 16. ARPA Canada's contribution to constitutional legal analysis will assist the Court to determine the issues involved in this application for judicial review.
 17. ARPA Canada's unique perspective will assist the Court in evaluating the broader societal implications of the legal issues at play in this case.
 18. ARPA Canada's intervention will not prejudice the parties in any way and will not change the focus, scope or nature of the proceedings.
 19. ARPA Canada's position is that freedom of religion in Canada deserves robust protection for individuals as well as for groups, in public and in private.
 20. ARPA Canada seeks to present arguments that will assist the Court in:
 - a. Considering the implications of section 15 of the *Charter* in this appeal.
 - b. Appreciating the need for citizens to have equal access to the public square without discrimination and, in particular, without discrimination on the basis of religion;

- c. Appreciating that 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;
- d. Appreciating that 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;
- e. Considering the link between section 15 of the *Charter* and the sections 2(a) and 2(d) of the *Charter*; and,
- f. Appreciating that the proper way for section 15 of the *Charter* to be interpreted is to do so with other *Charter* values and *Charter* rights in mind, such as freedom of religion and freedom of association.

21. ARPA Canada's proposed intervention will not delay or lengthen these proceedings.

22. ARPA Canada does not seek to broaden the record or raise new issues.

23. ARPA Canada does not seek costs on this motion or in these proceedings if leave to intervene is granted, and asks that no costs be ordered against it.

24. Rules 13.02 and 13.03 of the *Rules of Civil Procedure*.


25. Such further and other grounds as counsel may advise and as this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

26. the Affidavit of Mark H. Penninga, sworn November 27, 2015; and,

27. such further and other material as counsel may advise and as counsel may advise and as this Honourable Court may permit.

Date: November 27, 2015



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TRINITY WESTERN UNIVERSITY et al.

and

Appellants

THE LAW SOCIETY OF UPPER CANADA

Respondent

Court File No. M45342

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Proceedings commenced at Toronto

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Tab 2

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Respondent

**AFFIDAVIT OF MARK H. PENNINGA
THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA**

I, Mark H. Penninga, Executive Director of the Association for Reformed Political Action (ARPA) Canada, of the Town of Smithers, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Executive Director of the Association for Reformed Political Action (ARPA) Canada (hereinafter "ARPA Canada"). I have held this position since August 2007, and as such have personal knowledge of the facts and matters herein set forth, except where stated to be based on information and belief and where so stated I believe them to be true. ARPA Canada has authorized me to make this Affidavit in support of an application to intervene in this matter.

2. ARPA Canada seeks intervener status in order to make submissions to this Honourable Court with respect to the impact of the decision on members of Canadian religious communities in general and on members of Reformed Christian communities in particular. The submissions will focus on

these members' rights of equal access to the public square without discrimination on the basis of religion as protected in section 15 of the *Canadian Charter of Rights and Freedoms* (hereinafter "*Charter*"). The submissions will also include incidental reflections on the intersection of freedom of religion and freedom of association with that equality right, including the freedom to teach from a confessional perspective and to live according to a communally sanctioned lifestyle.

ARPA Canada and Its Expertise

3. I received a B.A. in philosophy from Trinity Western University, the Christian institution acting as a petitioner in this matter, and an M.A. in political science from the University of Lethbridge. ARPA Canada's legal counsel André Schutten has special expertise in the constitutional matters before the courts in Ontario, Nova Scotia, British Columbia and the Supreme Court of Canada. Mr. Schutten received an Honours B.A. in religious studies from McMaster University. After completing his law degree at the University of Ottawa, he finished an LL.M. in Constitutional Law at Osgoode Hall Law School.

4. ARPA Canada is a not-for-profit and non-partisan organization devoted to educating, equipping, and assisting members of Canada's Reformed churches and the broader Christian community as they seek to participate in the public square. ARPA Canada does not seek or accept funding from any level of government.

5. As "faith without deeds is dead" (James 2:26) so ARPA Canada believes that the Christian faith must be applied to Canadian society in both word and deed. Believing Biblical principles about social and political issues must translate into living these principles out, even amidst a secular nation that may disagree with these principles.

6. ARPA Canada's mission is rooted in the Reformed confessions of faith, which are distinct from the larger and more well-known branches of Christianity (Evangelical, Mainline, Roman Catholic or Orthodox). The Reformed Christian faith upholds the sovereignty of God and consequently the importance of applying His Word to all of life, including the social, moral and political spheres.

7. With a theological history rooted in John Calvin and the Protestant Reformation, Reformed churches have a long history of faith-based political engagement. *The Belgic Confession* [1561] (subscribed to by most Reformed denominations) states: "We believe that, because of the depravity of mankind, our gracious God has ordained kings, princes, and civil officers. He wants the world to be governed by laws and statutes, in order that the lawlessness of men be restrained and that everything be conducted among them in good order" (Article 36).

8. Consistent with their theological heritage in Belgium, the Netherlands, France, Switzerland and Germany, local ARPA groups first appeared in Canadian Reformed Churches in the late 1970's and operated independently and to varying degrees of activity until 2007, when ARPA Canada was registered as a national not-for-profit corporation.

9. Since our incorporation in 2007, ARPA Canada has become the primary means through which many Reformed Christians in Canada engage in social and political engagement in their communities, provinces, and nation. ARPA Canada coordinates approximately 15 local ARPA chapters across the country. They are made up of volunteers from a variety of age-groups, socio-economic, denominational and political backgrounds.

10. ARPA Canada currently directs its mission to the following church denominations:

- (a) Canadian Reformed Churches

- (b) United Reformed Churches
- (c) Free Reformed Churches
- (d) Heritage Reformed Churches
- (e) Reformed Presbyterian Churches

In addition, numerous Evangelical and Roman Catholic Christians make use of our resources, events, and activities.

11. Because members of these Reformed churches hold to the infallibility of Scripture and its relevance in our daily lives, we also uphold beliefs about equality, liberty, parental responsibility, family life, sexuality, abortion, and economics, among other issues. Our beliefs are distinct from secular humanist beliefs on the same issues. Since the secular humanist perspective dominates the public square today, much of our faith-based political engagement is unwelcome or simply unheard by the Canadian mainstream, including the majority of the legal profession.

12. There is a real and wide-spread concern among members of the Reformed church community generally that legal developments are making it difficult or even impossible to apply our faith to our public life and even to our own communal/corporate lives. The case before this Honourable Court is an example of the types of recent developments causing grave concern among Reformed Christian individuals.

13. ARPA Canada also directs its mission towards Christian schools with regular presentations and news bulletins to students and parents. For example, in 2013, ARPA Canada delivered 17 presentations in communities across Canada about the broader challenges to independent schools teaching from a confessional perspective. Over 2,600 parents and students attended, expressing overwhelming support to have our shared perspective brought to the Supreme Court of Canada.

14. In response to these concerns over the independence of Christian education, ARPA Canada developed and became the organizing member of the Association for Christian Educators and Schools (“ACES Canada”). ACES Canada was a national association comprised of six regional organizations who collectively represented three hundred and thirteen (313) confessional, independent, parent-run elementary and secondary schools and eleven (11) post-secondary confessional educational institutions from across Canada.

15. The mission statements of the various schools represented by ACES Canada testified to the reality that their faith is intrinsic to their reason for existence. Tampering with their confessional and lifestyle statements not only violates the tenets of the schools; it undermines the basis of their very existence. Schools and parents go to great lengths to ensure that every subject (mathematics, history, science and even physical education) and every aspect of life is taught from a Christian perspective and lived in harmony with God’s Word.

16. ARPA Canada led this coalition in an intervention before the Supreme Court of Canada in *Loyola High School, et al. v. Attorney General of Quebec*, heard March 24, 2014, decision rendered March 19, 2015. We are well positioned to apply the principles in that case to the case at bar.

17. ARPA Canada was also an intervener in the Supreme Court of Canada in *Carter et al., v. Canada (Attorney General)*, heard October 15, 2014 with the decision rendered February 6, 2015.

18. ARPA Canada intervened in the Supreme Court of Nova Scotia in *Trinity Western University v. Nova Scotia Barristers’ Society*, heard December 16 - 19, 2014; decision rendered January 28, 2015 and in *Trinity Western University v. Law Society of British Columbia* (decision pending). Further, ARPA Canada is intervening in the ongoing appeal of *Nova Scotia Barristers’ Society v. Trinity Western University* at the Court of Appeal for Nova Scotia.

19. ARPA Canada’s legal counsel also acted as co-counsel for the Evangelical Fellowship of Canada at the Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott*, a freedom of expression case.

20. ARPA Canada’s concern over the implicated *Charter* rights and fundamental freedoms goes beyond self-interest. In 2010 ARPA Canada spear-headed a national campaign in response to the suppression of freedom and liberty by the growing administrative arm of the State. The campaign was launched in November 2010 and has been featured in full articles in major newspapers across Canada. The campaign was directed towards all Canadians.

21. ARPA Canada has made submissions to provincial and federal governments in Canada on broad issues such as freedom, equality and liberty, and on more focused issues like early childhood education, euthanasia, abortion, and budget recommendations. Of particular interest to the case at bar, ARPA Canada presented a paper at the Ontario Human Rights Commission’s community dialogue on creed, resulting in a paper published in *Canadian Diversity Journal*.

22. ARPA Canada has devoted eight years to sustained grassroots engagement towards Canada’s Parliament and various provincial legislatures to uphold and protect our *Charter* protected rights and freedoms. This has included public awareness campaigns, presentations, debates and discussion forums, appearances in radio and television interviews, and the publication of numerous articles in magazines, national newspapers, academic journals and online sources.

Submissions to be made by ARPA Canada

23. If leave to intervene is granted, ARPA Canada will make the following arguments, outlined and summarized as follows:

- 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.

ARPA Canada’s Intervention Will Not Cause Undue Delay or Prejudice

24. Having been involved in interventions in other cases, ARPA Canada is aware of the need to avoid undue delay of the proceedings, or prejudice to any of the parties to this case. It is that awareness that motivates ARPA Canada to limit its argument to the equality rights of Christian Canadians as protected in section 15, with passing reference to their intersection with section 2(a) with section 2(d) of the *Charter*. This will avoid any unnecessary duplication of argument before this Court.

25. ARPA Canada also undertakes to consult with any other interveners to ensure no duplication of arguments for the benefit of this Honourable Court and the parties to this matter.

26. ARPA Canada understands the time constraints of such an action and undertakes, if leave to intervene is granted, to prepare, serve and file all documentation in a timely manner as directed by this Honourable Court.

ARPA Canada’s Interest in These Proceedings

27. The nature of constitutional litigation is such that rarely, if ever, is a concern limited to one case or one region. The proper interpretation of *Charter* rights will inevitably impact on individuals and groups across Canada.

28. In the present case, this Honourable Court is being asked to consider matters that will have a

profound effect on Canadian social and public policy and on the interests of a large number of individuals involved in Christian communities (families, church groups or even independent schools). This appeal involves important legal issues that transcend the immediate interests of the parties before this Court.

29. I believe that ARPA Canada has a legitimate and demonstrated interest in the subject matter raised in this case. ARPA Canada can speak for a large constituency of Canadians whose views are not represented by the parties to this appeal.

30. Besides its constitutional arguments, ARPA Canada can bring to this Court a moral, philosophical and social dimension to supplement the legal argument.

31. ARPA Canada believes that its views and the views of its constituency should be heard by this Honourable Court and we believe that our views will be helpful to this Court.

ARPA Canada's Intervention is in the Public Interest

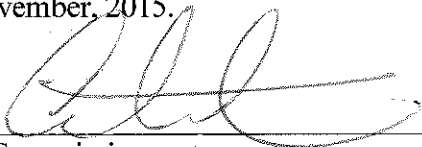
32. As a group dedicated to, *inter alia*, advancing true equality before the law and the fundamental freedoms as protected by the *Charter*, and as a group with a particular interest in independent Christian education, ARPA Canada is in a unique position to assist this Honourable Court in its consideration and application of *Charter* principles and values.

33. The facts of this important application raise the question of the nature and scope of the *Charter's* guarantee of the equal benefit of the law, and its intersection with freedom of religion and freedom of association. The deeper policy and philosophical issues that will inevitably be wrestled with by this Court will no doubt have implications for members of religious communities across this country, and in particular, members of Christian educational communities.

34. ARPA Canada's application to intervene in this case, and our contribution on equality rights, freedom of religion, freedom of association and the proper balancing of rights, will significantly advance the goal of giving this Court the fullest perspective from which to rule on the merits of the present application.

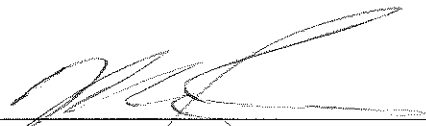
35. I make this affidavit in support of ARPA Canada's application to intervene in this matter and for no other or improper purpose.

SWORN BEFORE ME at the City of Ottawa,
Province of Ontario this 27th day of
November, 2015.



A Commissioner etc.

ANDRÉ SCHUTTÉN



MARK H. PENNINGA
Executive Director,
Association for Reformed
Political Action (ARPA) Canada

TRINITY WESTERN UNIVERSITY et al.

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Tab 3

Court File No.: M45342

COURT OF APPEAL FOR ONTARIO

**BEFORE THE HONOURABLE
JUSTICE**

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**FRIDAY, THE 11TH DAY
OF DECEMBER, 2015**

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Appellants

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THE LAW SOCIETY OF UPPER CANADA

Respondent

ORDER

UPON THIS MOTION from the Proposed Interveners, the Association for Reformed Political Action (ARPA) Canada;

AND UPON READING the materials as filed by ARPA Canada;

AND UPON HEARING the submissions of counsel for the ARPA Canada;

IT IS ORDERED:

1. The Motion by ARPA Canada for leave to intervene in these proceedings as friends of the Court is granted;
2. ARPA Canada shall be permitted to file a joint factum of no more than 10 pages;
3. ARPA Canada shall be permitted to make joint oral arguments at the hearing of this appeal of no more than 10 minutes; and,
4. ARPA Canada shall serve all materials on other parties electronically and shall consent to being served with all materials electronically.
5. There shall be no costs of this motion.

Dated at Toronto this 11th day of December, 2015

TRINITY WESTERN UNIVERSITY et al.

and

Appellants

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