

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Association for Reformed Political Action v. City of Hamilton, 2022 ONSC 6691

Superior Court of Justice Ontario, Nishikawa J, 30 November 2022

Application for an association to be joined as an intervener in an application for judicial review of an advertisement refused by a municipal authority.

Key words: Advocacy, Ontario, Canada, Advertisement, Pro-life, Abortion, Intervener

1. The Association for Reformed Political Action (ARPA) Canada is a not for profit, national organization engaged in educating and assisting members of Canada’s Reformed Churches and the broader Christian community in participating in public discourse.
2. Together with an individual campaigner, it sought a judicial review of a decision by the City of Hamilton (the City), rejecting an advertisement that the ARPA sought to have displayed on the City’s transit system (the Decision).
3. The Court described the advertisement as (at [3]):

The advertisement that ARPA submitted to the City states: “We’re for women’s rights: Hers. Hers. Hers. And Hers.” The word “Hers” appears under three separate photographs of a young woman, a girl, and a younger girl. The words “And Hers.” appears below a sonogram image of a late-term fetus in the womb. The advertisement refers to a website, defendgirls.com. The Applicants submit that the advertisement was aimed at mobilizing support for Bill C-233, which sought to prohibit sex-selective abortion.

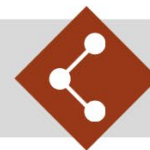
4. The City rejected the advertisement stating that the phrase “And Hers.” would “need to be revised so as not to reflect personhood in relation to” the last image. The Decision referenced the Canadian Code of Advertising Standards, Clause 1 (Accuracy and Clarity), which forms part of the City’s advertising policy, and the Criminal Code.
5. The Abortion Rights Coalition of Canada (ARCC) sought leave to intervene in the application for judicial review.
6. ARCC is a national feminist organization devoted to ensuring abortion rights and access. ARCC was established in 2005 to coordinate the work of local, provincial, and regional pro-choice groups. ARCC undertakes activities that include public advocacy and education, research projects, lobbying, and monitoring anti-abortion advertising and

messaging. According to ARCC, it is the only national organization that monitors anti-abortion advertising. In this capacity, it receives complaints from members of the public about false, misleading, demeaning, or discriminatory advertisements.

7. The City made no submissions on the application to intervene, and the ARPA opposed the intervention.
8. The ARPA argued that ARCC:
 - sought to raise new issues or to expand the issues on the application;
 - sought to supplement the City's reasons for rejecting the advertisement; and
 - would be duplicative of the City's submissions.
9. The Court noted that the following considerations applied to a decision to grant leave to intervene as a friend of the Court:
 - The nature of the case;
 - The issues involved;
 - The likelihood that the proposed intervener will make a useful and distinct contribution not otherwise offered by the parties; and
 - Whether the intervention will cause injustice to the parties, or undue delay.
10. The Court considered the factum of ARCC and found that:
 - a) The nature of the case and issues involved engage the public interest as it raised important issues regarding the appropriate balance to be struck between freedom of expression and the City's ability to restrict potentially misleading advertising in public spaces.
 - b) The ARCC had both broad-based knowledge and expertise in the issues raised by the application and would be able to provide additional perspectives, other than the perspective of a municipal government, which would assist the Court in understanding the broader potential impact of the Court's decision on those not before the Court.
 - c) As the parties had not yet agreed to a timetable for the exchange of material and no hearing date for the application had been set, ARCC's intervention would not unduly delay the proceeding.
 - d) The Court agreed to give leave for the ARCC to intervene, but placed conditions on the intervention that (at [24]):
 - i. ARCC would accept the record as prepared by the parties and not add to it, adduce further evidence, or raise any new issues beyond those raised by the parties;
 - ii. ARCC would make all reasonable efforts to avoid duplicating the City's submissions;
 - iii. ARCC would serve a factum not exceeding 15 double-spaced pages;
 - iv. The applicants could file a reply factum, not to exceed 15 double-spaced pages, to respond to the issues raised in ARCC's factum;

- v. ARCC would be permitted to make submissions not exceeding 20 minutes at the hearing of the appeal; and
- vi. Unless the panel permitted otherwise, ARCC would not seek costs.

IMPLICATIONS



An intervener, friend of the court, or *amicus curiae* is an individual or organization which is not a party to a legal case, but which is permitted to assist a court by offering information, expertise, or insight that has a bearing on the issues in the case. The phrase *amicus curiae* is legal Latin, and the origin of the term has been dated to 1605–1615.

VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/on/onscdc/doc/2022/2022onsc6691/2022onsc6691.html>

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