File No.: COA-25-CV-0667

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CHRISTIAN HERITAGE PARTY OF CANADA, CHP HAMILTON-MOUNTAIN ELECTORAL DISTRICT ASSOCIATION

Appellants

- and -

THE CITY OF HAMILTON

Respondent

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

November 7, 2025

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PART 1 – OVERVIEW

1. This Appeal concerns the freedom to participate in public debate on a question of profound public importance. The Appellants' advertisement **("the Ad")** communicated, simply and clearly, that women are by definition female. It thus expressed a philosophical and political belief that is deeply relevant to questions of women's rights and public policy. Communicating this belief in a public forum, or permitting it to be communicated by a private actor in that forum, is not unlawful discrimination. The City offers no evidence capable of supporting an inference that the Ad would cause harm, foster discrimination, or threaten safety.

2. In a free and democratic society, citizens must be free to speak what they believe to be true about such matters, no less when their beliefs conflict with the government's position or with prevailing societal views. The Respondent, however, considers the Appellants' view "legally incorrect" and "discriminatory" and so barred it from public display.[1] In doing so, the City assumed the role of arbiter of truth – a role no government may play in a democracy. Government must not abuse its control over public forums, which it holds in trust for the public, to permit only those messages that align with its preferred ideology.

3. As various courts have recognized, and as the UN Special Rapporteur on violence against women has recently affirmed, people have reasoned, legitimate concerns about erasing sex-based language and legal protections for women.[2] To voice such concerns publicly is not discrimination; it is democracy in action. No government may target one side of this debate for censorship because it disapproves of the political or philosophical viewpoint expressed.

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[1] See Factum of the Respondent at para 51 [**FRE**].
[2] See cases cite in paras 4, 6-8 and 30 below, in the herein factum.

PART II – ARGUMENT

A. The nature and importance of the expression in question

i) The Ad relates to profound questions of being and flourishing

4. A free and democratic society is "committed to permitting everyone to speak what they understand to be the truth about the most profound questions of being and flourishing, and to advocate for laws and policies that reflect this."[3] Questions about sex and gender are among such questions.[4] Whether or when a biologically male person can or should be considered a *woman* for philosophical, social, moral, legal, or other purposes is a question of profound significance for individuals and society. Expression on such issues deserves strong *Charter* protection.

5. The Supreme Court explains in *Hansman* that "the level of protection to be afforded to any particular expression can vary widely according to the quality of the expression, its subject matter, the motivation behind it, or the form through which it was expressed."[5] Regarding quality and subject matter, the Ad positively and concisely states a position on an important question. It disparages no one. It has no inappropriate words or images. In terms of form, a printed poster at a bus stop can be read (or not) by persons passing by or waiting for a bus. In terms of motivation, the Ad links the definition of "woman" to the party's desire to stand up for truth and the City's Reasons grant that the Ad presents "CHP's position on a political issue that is important to it."[6] Thus the Ad's ties to truth-seeking, political participation, and self-fulfilment are obvious.[7]

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[3] *40 Days for Life v. Dietrich*, 2024 ONCA 599, at para 89 [***40 days***].
[4] *Hansman v. Neufeld*, 2023 SCC 14, at paras 79-85 [***Hansman***].
[5] *Hansman*, *ibid*, at para 79.
[6] Appeal Book and Compendium of the Appellants, Tab 4, at 41 [**ABCO**].
[7] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 976. *The Redeemed Christian Church of God v New Westminster (City)*, 2021 BCSC 1401, at paras 97-98.

ii) The Ad relates to important contemporary questions about women's rights

6. The notion that the meaning of "woman" (for legal or other purposes) is subjective, a matter of sincere self-identification, is legitimately contestable in a free and democratic society. It arguably empties it of meaning and endangers women's rights. The UN Special Rapporteur on violence against women and girls, an expert appointed by the UN Human Rights Council, comments in a 2025 report, the "concerted international push to delink the definition of men and women from biological sex" results in denying female persons their "right to be recognized in law as a distinct, particularly vulnerable group in need of targeted protection."[8]

7. The Rapporteur celebrates the recent UK Supreme Court decision for holding "that references to 'sex' and 'woman' in domestic anti-discrimination law must be references to biological sex" and for "protect[ing] women and girls under a distinct category while also providing anti-discrimination rights to those who identify as transgender, without undermining the right of women and girls to single-sex spaces."[9]

8. The Court need not agree with the Rapporteur's assessment to recognize that people have legitimate concerns about and objections to the "erasure of sex-specific language and categories" today. The Court of Appeal (England and Whales), for example, acknowledges this in *Miller v. College of Policing* (2021):

> [31.] Mr Miller holds what are sometimes described as gender critical beliefs which are encapsulated in his belief that trans women are men who have chosen to identify as women. Mr Miller considers that conflating sex (which he considers to be a purely biological classification) with gender poses a risk to women's sex-based rights. […]

[8] Report of the Special Rapporteur, Reem Alsalem, "Sex-based violence against women and girls: new frontiers and emerging issues," Human Rights Council, Fifty-ninth session, June 16, 2025, at 4.
[9] Report of the Special Rapporteur, *ibid*, at 4.

> [34.] The topic on which Mr. Miller was tweeting and its broader implications are plainly important matters of public interest on which strong views are held and publicly expressed.[10]

9. The Ad challenges prevailing notions in Canadian law, policy, and society which the CHP considers untrue and damaging.[11] The Respondent highlights that there are no current bills to remove "gender identity" from statute law. But as Richard Moon explains, public expression that "[reacts] to the failure of the prevailing political conversation to take any, or adequate, account of important public issues" can "create a more democratic conversation that challenges established institutions and the forms of discourse that are supported by those institutions."[12]

10. Similarly, the Supreme Court notes that the value of "counter-speech" is tied to "the recognition that the open exchange of ideas is a precondition to unlocking the value of free expression" and that "it is partly through a clash with extreme and erroneous views that truth and the democratic vision remain vigorous and alive."[13] Given that a definition of "woman" unmoored from biology has prevailed in Canadian law and public policy, the Ad is valuable as counter-speech (and is, in the intervener's view, neither erroneous nor extreme).

iii) The Ad relates to the defence of vulnerable or marginalized groups

11. "Counter-speech motivated by the defence of a vulnerable or marginalized group in society also engages the values at the core of s. 15(1)," the Supreme Court says.[14] The Ad relates to the

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[10] *The Queen on the Application of Harry Miller v. The College of Policing*, [2021] EWCA Civ 1926. The Ontario Divisional Court noted these were "topics of social and political interest" in *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685 at para 7. The U.S. Court of Appeals for Sixth Circuit calls gender identity a "hotly contested matter of public concern," in *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021), at 15.

[11] Like the expression at issue in *Hansman*, *supra* note 4, at para 83.

[12] Richard Moon, *The Life and Death of Freedom of Expression* (University of Toronto Press, 2024), at 228, ARPA BOA Tab 1.

[13] *Hansman*, *supra* note 4, at para 81

[14] *Hansman*, *ibid*, at para 82.

defence of a marginalized group namely, women or female persons – since, as the UN Rapporteur highlighted, "what is not defined cannot be protected."[15] Notably, the Ontario Human Rights Commission's Policy, which the Respondent relies on, does not define "woman" or "man", but implies that they are matters of "gender identity"—which it defines in a circular way as "each person's internal and individual experience of gender" (gender being undefined).[16]

12. Another vulnerable group the Appellant was concerned about, according to its website, as highlighted in the City's Reasons, is children.[17] Indeed, the underlying issue addressed by the Ad relates to such practical issues as whether schools should teach children that they have a "gender identity" separate from their bodily sex, that the former determines whether they are a boy or girl (or both or neither), or that it possible for a child to be "born in the wrong body". The Ad implicitly counters notions the CHP believes are untrue and potentially damaging to children.[18]

13. The Respondent and EGALE may contend that *Charter* values tied to s. 15 weigh in favour of protecting transgender persons from encountering the message of the Ad. Of course, being transgender does not necessarily entail disagreeing with the proposition that women are female. But even assuming the Respondent's (or EGALE's) interpretation of *Charter* values is uncontroversial, "it would not follow that expression premised on a different interpretation of the *Charter* would inherently be of lesser value."[19]

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[15] Report of the Special Rapporteur, at para 15, pg. 4.
[16] Ontario Human Rights Commission Policy on preventing discrimination because of gender identity and gender expression, p. 3, Summary, "Gender identity."
[17] ABCO, Tab 5, at 63.
[18] Like Mr. Hansman's speech in *Hansman*, *supra* note 4, at para 83. It also relates to such issues as whether children should be able to change their gender identity at school, a topic of provincial legislation and debate – see *Saskatchewan (Minister of Education) v. UR Pride Centre for Sexuality and Gender Diversity*, 2025 SKCA 74.
[19] *40 Days*, *supra* note 3, at para 89. In that case, the parties' competing interpretations of what the *Charter* stands for, as manifested in their public expression, had to do with the right to choose abortion and the right to life of unborn children.

iv) The Ad does not deny anyone's existence, experience, or dignity

14. To assert that "woman" is definitionally female is not to imply that transgender persons lack dignity or should not be treated with respect. Nor is it to deny or "condemn" anyone's "existence". A person can reject others' beliefs (even core beliefs about themselves) as false, while still respecting them as persons. For example, to reject the notion of an immortal soul is not to condemn persons whose belief in the same is crucial to their sense of identity and worth. Maintaining a free society depends on distinguishing between criticizing beliefs or ideas important to an identifiable group and attacking the group's members.[20]

15. The City's reasons for rejecting the Ad state: "The definition [of woman] is by its nature, narrow and exclusionary, and does not acknowledge the lived experiences of transgender and non-binary individuals who identify as women."[21] This characterization is unreasonable.

16. First, asserting that *women are female* does not necessarily ignore the experience of transgender individuals. Rather, it makes an implied epistemological claim that "woman" (and "female") cannot be defined based on subjective experience or feelings. This position is compatible with acknowledging lived experiences and with thinking that transgender persons deserve respect, legal accommodations, and appropriate social and medical supports.[22]

17. Second, defining woman by reference to biological sex is no more "narrow" or "exclusionary" than defining it by reference to "gender identity". A gender identity-based definition might *exclude* from the category "woman" those female persons who present themselves socially as male *or* those who do not identify with social or cultural norms and

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[20] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 at para 90 **[*Whatcott* SCC]**.
[21] ABCO, Tab 4, at 37.
[22] Report of the Special Rapporteur, at para 16, pg. 4.

stereotypes that tend to be attached to (or imposed on) female persons. In contrast, a biology-based definition would *not exclude* such persons from the category "woman".

18. Notably, the Ad does not say anything about transgender persons, let alone disparage them, promote hatred toward them, or support mistreating them. Moreover, as the UK Supreme Court recognized in *For Women Scotland*, affirming women as a biologically defined category of persons and preserving certain sex-specific rights is compatible with having legal recognition, protections, and accommodations for transgender persons.[23]

19. As Jeremy Waldron explains in his book-length defence of hate speech laws, "the basic distinction between an attack on a body of beliefs and an attack on the basic social standing and reputation of a group of people is clear."[24] Waldron also contends that this distinction is foundational for a functioning democracy, in which we must "distinguish between the respect accorded to a citizen and the disagreement we might have concerning his or her social or political convictions. Political life always involves a combination of the sharpest attacks on the latter and the most solicitous respect for the former."[25]

B. Appropriate government posture toward philosophical, religious, or political debates

20. The Respondent calls the Ad "legally incorrect,"[26] a useful shorthand for its extensive arguments that the CHP's view does not align with the view of sex and gender identity reflected in Ontario human rights law or the City's policies. But the Ad does not present itself as a

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[23] *For Women Scotland Ltd v. The Scottish Ministers*, [2025] UKSC 16 at para 248 [***For Women Scotland***].
[24] Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012) at 119, ARPA BOA, Tab 2.
[25] Waldron, *ibid*, at 120. These same principles are reflected in *Whatcott* SCC, *supra* note 20, at paras 49-54, para 58, para 119, para 122, para 163, para 200, and *R. v. Keegstra* at 778.
[26] FRE at para 51.

statement of law and thus cannot misstate it. Moreover, the law does not determine what is true or false in non-legal matters concerning questions of sex and gender identity.

21. As the UK Supreme Court explained, "It is not the role of the court to adjudicate on the arguments in the public domain on the meaning of gender or sex, nor is it to define the meaning of the word 'woman' other than when it is used in the provisions of the [Equality Act] 2010."[27] It is likewise not the role of the City or any other government body to "adjudicate arguments in the public domain" or to dictate the "correct" definition and use of "woman" in public debate.

22. Similarly, the Supreme Court of Canada modelled an appropriate posture on the question of whether unborn children are persons.[28] McLachlin C.J. observed for the Court that "the law of Canada does not recognize the unborn child as a legal or juridical person," but she was careful to make clear the Court was not making a declaration about unborn children's "biological status, nor indeed spiritual status," nor any other status except legal.

23. The Respondent protests that the proposition in the Ad "is contrary to the law and public policy of this province".[29] It is an empty protest. The law is not the arbiter of truth and is subject to ongoing debate in a free and democratic society.[30] Of course, the law may take a position on how to define woman, man, sex, gender, etc. for legal purposes. That does not make people any less free to debate the meaning of such terms or what the law should say about them.

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[27] *For Women Scotland* , *supra* note 23, at para 2.
[28] *Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)*, [1997] 3 SCR 925
[29] FRE at para 44.
[30] *R v Zundel,* [1992] 2 SCR 731 at 827; *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139, at 174, "no official, high or petty, can prescribe what shall be orthodox in politics […] or other matters of opinion". [***Commonwealth of Canada***]

24. The Respondent emphasizes that the *Code* recognizes the "dignity and worth of every person".[31] But the *Code* does not grant the City power to exclude from a public forum other views of what respect for dignity requires[32] – for example, the view respecting women's dignity requires recognizing that males are not women. Gender identity's recognition in law and its eclipsing of sex may reflect what respect for dignity requires *according to the state*. But citizens need not agree. The democratic legitimacy of the law depends on the freedom to question or oppose it.[33] People are required to comply with law, not agree with it or its underlying premises.

25. As the Supreme Court explained regarding a provincial prohibition on public expression that promotes hatred (part of the *Saskatchewan Human Rights Code*):

> [51] […] Hate speech legislation is not aimed at discouraging repugnant or offensive ideas. It does not, for example, prohibit expression which debates the merits of reducing the rights of vulnerable groups in society. It only restricts the use of expression exposing them to hatred as a part of that debate. It does not target the ideas, but their mode of expression in public and the effect that this mode of expression may have.
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> […]
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> [58] […] The repugnancy of the ideas being expressed is not, in itself, sufficient to justify restricting the expression. The prohibition of hate speech is not designed to censor ideas or to compel anyone to think "correctly". […] The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.[34]

C. The Ad is not "discriminatory" in a legally meaningful sense

26. Limits on *Charter* freedoms imposed by administrative decisions must be prescribed by law and demonstrably justified in a free and democratic society.[35] The Respondent relies

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[31] FRE at para 6.
[32] *40 Days*, *supra* note 3, at para 89.
[33] *Reference re. Alberta Statutes*, [1938] SCR 100, Justice Kerwin at 146, "Freedom of discussion is essential to enlighten opinion in a democratic state […]. There must be an untrammeled publication of […] the opinions of the political parties contending for ascendancy."
[34] *Whatcott* SCC, *supra* note 20, at paras 51 and 58.
[35] Section 1 of the *Charter* - for application in administrative law setting, see *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at para 82 and para 162.

primarily on the *Human Rights Code* to justify its Decision, noting that "the City's relevant policies are consistent with and indeed reflect the Ontario *Human Rights Code* – to which all advertising must comply"[36] and that "gender identity" in the *Code* is "on equal footing with … other enumerated grounds on the basis of which discrimination is prohibited."[37]

27. The *Code* regulates services, housing, and employment to ensure people "have equal rights and opportunities without discrimination that is contrary to law."[38] The Ad does not discriminate in a manner that is contrary to law. It does not offer services, housing, or employment or communicate an intent to discriminate in relation thereto. Nor does it ask others to deny services, housing, or employment to anyone. The City's reasons accuse the CHP of "excluding individuals, such as transgender women, who identify as female" – not from services, housing, or employment, but from the CHP's stated view of what "woman" means, nothing more. Of course, positing a definition for a term is an exercise which necessarily discriminates and excludes (i.e. draws conceptual boundaries and recognizes differences).[39]

28. The Respondent argues that the City could not post a message like the Ad on its premises, "nor [could] any other entity in Ontario that provides services to the public."[40] The import of the argument seems to be that, for a pub (for example) to put up a poster on the wall akin to the Ad would amount to unlawful discrimination against potential transgender customers. Even if that

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[36] FRE at para 19.
[37] FRE at para 6.
[38] Preamble to the *Human Rights Code*, RSO 1990 c H.19 (emphasis added).
[39] City's July 6 letter, at p. 1, says the CHP's advertisement "excludes" people who self-identify as women but who were not "assigned this gender at birth" from its definition of woman, ABCO, Tab 4, 36.
[40] FRE at para 44.

were so, the argument makes a category error. In the CHP's case, it would not be the City (the property owner / service provider) making the statement, but a private actor in a public forum.[41]

29. Making a general assertion, in a public forum, that women are female is very different than a service provider posting a message to the effect that members of a certain race, religion, etc., are not welcome or will not be served. Indeed, there are various situations in which refusing to acknowledge or treat someone in accordance with their gender identity will constitute unlawful discrimination. A political party communicating to the public that it is willing to stand up for the reality that women are female is not such a situation.

30. In *Maya Forstater v Centre for Global Development Europe*[42], a UK case, the Claimant held the belief that sex is immutable and not to be conflated with gender identity, and suffered employment consequences for expressing that view on social media. The appeal involved a question of whether her belief constituted a protected philosophical belief within the meaning of the UK's Equality Act 2010. The Employment Appeal Tribunal (EAT) found that it did. The EAT notes that while "[s]ome beliefs, for example, a belief that all non-white people should be forcibly deported for the good of the nation, are such that any manifestation of them would be highly likely to espouse hatred and incitement to violence," the Claimant's beliefs were "not comparable."[43] The EAT also corrected the Tribunal below for "imposing a requirement on the Claimant to refer to a trans woman as a woman to avoid harassment," because:

> In the absence of any reference to specific circumstances in which harassment might arise, this is, in effect, a blanket restriction on the Claimant's right to freedom of expression […]. However, that right applies to the expression of views that might "offend, shock or disturb". The extent to which the State can impose restrictions on the exercise of that right is

[41] As Lamer C.J. explains in *Commonwealth of Canada*, at 154, governments "own places for the citizens' benefit and use, unlike a private owner," which use, for some public property, includes sharing one's views publicly.
[42] *Forstater v CGD Europe*, [2021] UKEAT 0105_20_JOJ [***Forstater***]. (The Employment Appeals Tribunal is a superior court of record, according to its website and the Employment Tribunals Act 1996 c. 17, s. 20.)
[43] *Forstater, ibid*, at para 100.

> determined by the factors set out in Article 10(2), i.e. restrictions that are "prescribed by law and are necessary in a democratic society … for the protection of the reputation or rights of others…" It seems that the Tribunal's justification for this blanket restriction was that the Claimant's belief "necessarily harms the rights of others". As discussed above, that is not correct: whilst the Claimant's belief, and her expression of them […] could amount to unlawful harassment in some circumstances, it would not always have that effect.[44]

31. The label "discriminatory" as the Respondent uses it does not signify unlawful discrimination. It merely means that the City perceived it as "narrow and exclusionary" and as "carry[ing] an exclusive undertone", or as "simplif[ying] a complicated issue" by "support[ing] a traditional and biologically determined definition of gender, in line with conservative values."[45]

D. Gaps in City's reasons for why the Ad threatens safety and promotes discrimination

i) No inference regarding the Ad can be drawn from "negative media depictions" study

32. The City cites a study showing a correlation between "negative media messaging" and poorer health outcomes for those identifying as transgender.[46] Yet the City never explains what a "negative media message" is or whether the CHP's political advertisement would be considered a "negative media message" within the meaning of that study. And the study itself, surprisingly, does not define "negative media message," though it also uses the phrase "negative media depictions of transgender people".[47] The Ad does not depict or mention transgender people.

ii) The advisory committee's unsupported opinion on fostering harm and discrimination

33. The City says its LGBTQ advisory committee advised "that it is the experience of the trans community" that messaging like the Ad can "inflict harm well beyond hurt feelings" and "foster

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[44] *Forstater, ibid*, at para 103.
[45] Quoting from the City's analysis of the Ad in its July 6 letter, ABCO, Tab 4 at 37.
[46] FRE at para 24.
[47] ABCO, Tab 5 at 104-105.

anti-LGBTQ sentiment and discrimination." This is opinion evidence – drawing inferences from the experiences of a community regarding the effect the Ad would have. But there is no direct testimony or studies cited to support this, no methodology shown, nor any actual expert presented who could give a fair, admissible opinion on whether the Ad would likely have this effect. Nor is there any evidence that seeing this Ad on the side of a bus shelter would prevent a transgender person from using transit or cause them to feel unsafe when doing so.

34. In *Greater Vancouver*, the Supreme Court struck down a rule against ads that are "likely […] to cause offence to any person or group of persons or create controversy" and another against ads that "advocates or opposes any ideology or political philosophy, point of view, policy or action, or […] political party […]." The Court found that these were not rationally connected to the objective of preserving a safe and welcoming transit system, since citizens of a democracy are expected to put up with some degree of controversy.[48]

35. In *Whatcott*, the Supreme Court struck down Saskatchewan's human rights law prohibition on public expression that "ridicules, belittles or otherwise affronts the dignity" of a protected group.[49] The Court found that this prohibition was "not rationally connected to the legislative purpose of addressing systemic discrimination of protected groups."[50] If the causal connection between "mere" ridicule or belittling and discrimination is too weak to justify censorship, then surely prohibiting speech that ridicules nobody, but challenges a belief which may be important to a certain group, cannot be necessary to prevent discrimination against that group.

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[48] *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component, 2009* SCC 31 [***Greater Vancouver***] at para 76. Cf. *Bracken v. Niagara Parks Police*, 2018 ONCA 261, at para 75.
[49] *Whatcott* SCC, supra note 20, at para 89.
[50] *Whatcott* SCC, *ibid*, at para 92. Ontario's *Human Rights Code* has no such prohibition.

36. Absent strong evidence, courts should avoid endorsing the notion that asserting a biological sex-based definition of "woman" promotes discrimination. Doing so would have a severe chilling effect on public debate of important issues. It would also encourage people to interpret philosophical or political disagreements as personal attacks or existential threats, promoting fragility over resilience and undermining openness to robust debate.

iii) Police data show no causal link between sex-based definition and hate crimes

37. The City goes on to cite Hamilton Police Service data on hate crimes and hate incidents. The City does not demonstrate any correlation, let alone a causal connection, between hate incidents and the proposition stated in the Ad. The City does not explain why or how the Ad, if displayed, would likely incite hate crimes against LGBTQ persons. The City simply assumes that mere exposure to the proposition in the Ad primes people to commit hate crimes.

38. It would be prejudicial toward people who believe that men and women are defined by biological sex to assume, without evidence, that this belief causes hate crimes. Christians, gender critical feminists, or anyone who believes that women are by definition female cannot be assumed to harbour or wish to promote hatred toward or ill treatment of anyone. Such an assumption, especially if endorsed by a government or court, might legitimize mistreating people who believe women are female. As Alon Harel cautions, "The social meaning of the state's regulation is not determined exclusively by the state's own intentions," and censoring speech that constitutes part of a "comprehensive form of life" (such as a religious worldview) "is typically understood as a direct condemnation of the form of life and the values it stands for."[51]

[51] Alon Harel, "Hate Speech," in *The Oxford Handbook of Freedom of Speech* (Oxford University Press, 2021), at 474, ARPA BOA, Tab 3.

E. Regulating a public forum in a free and democratic society

39. The Court in *Greater Vancouver* reasoned that political expression on a bus could further "democratic discourse, and perhaps even truth finding and self-fulfillment," because a bus, like a street or sidewalk, "is a public place where individuals can openly interact with each other and their surroundings."[52] The Court struck down a general ban on political advertising in that case.[53] Such a ban, however, is more constitutionally defensible in a free and democratic society than a rule that effectively bans one side in an important public debate. It would be less of a threat to democratic *discourse* for the City to forbid all political advertising.

40. In *Switzman v. Elbling and Quebec (AG)*, Rand J. found that Quebec's law on "communistic propaganda" shielded people from what the government considered "dangerous ideas" and from their own "thinking propensities". This clashes with democratic governance, Rand J. says, because "government by the free public opinion of an open society […] demands the condition of a virtually unobstructed access to and diffusion of ideas."[54] The City does not trust people to encounter an idea, simply and civilly stated, which it does not endorse. The City's purported concern that mere exposure to this idea will cause harm is speculative. Censoring the Ad appears to have been a political decision in search of a legal and evidentiary justification.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 7th day of November, 2025.

John Sikkema
& Joel Persaud
Counsel for the Intervener,
ARPA Canada

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[52] *Greater Vancouver at* para 43
[53] *Greater Vancouver*, *ibid*, at para 139.
[54] *Switzman v. Elbling and A.G. of Quebec*, [1957] SCR 285, at 306.

FACTUM CERTIFICATE OF THE INTERVENER, ARPA CANADA

I, John Sikkema, counsel for the Intervener, ARPA Canada, certify

that: 1. An Order under Rule 61.09(2) of the Rules of Civil Procedure is not required;

2. Fifteen (15) minutes will be required for the Intervener's oral argument;

3.The Intervener's Factum complies with Rule 61.11(3); and

4. The word count contained in Parts I – VI of the Intervener's Factum is 4,971 words.

November 7, 2025

SCHEDULE A – LIST OF AUTHORITIES

1. *40 Days for Life v. Dietrich*, 2024 ONCA 599.
2. *Bracken v. Niagara Parks Police*, 2018 ONCA 261.
3. *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139.
4. *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31.
5. *Hansman v. Neufeld*, 2023 SCC 14.
6. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927.
7. *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32.
8. *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685.
9. *R. v. Keegstra*, [1990] 3 SCR 697.
10. *R. v. Sharma*, 2020 ONCA 478.
11. *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11.
12. *Saskatchewan (Minister of Education) v. UR Pride Centre for Sexuality and Gender Diversity*, 2025 SKCA 74
13. *Switzman v. Elbling and A.G. of Quebec*, [1957] SCR 285.
14. *Reference re. Alberta Statutes*, [1938] SCR 100.
15. *R v Zundel,* [1992] 2 SCR 731.
16. *The Redeemed Christian Church of God v New Westminster (City)*, 2021 BCSC 1401.
17. *Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)*, [1997] 3 SCR 925.

International jurisprudence

1. *For Women Scotland Ltd v. The Scottish Ministers*, [2025] UKSC 16 (UK Supreme Court).
2. *Maya Forstater v Centre for Global Development Europe*, [2021] UKEAT 0105_20_JOJ (UK Employment Appeals Tribunal).
3. *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) (U.S. Court of Appeals, Sixth Circuit)
4. *The Queen on the Application of Harry Miller v. The College of Policing*, [2021] EWCA Civ 1926 (Court of Appeal for England and Whales).

Secondary Sources

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2. Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012)

3. Richard Moon, *The Life and Death of Freedom of Expression* (University of Toronto Press, 2024).

4. United Nations Special Rapporteur on violence against women and girls, “Sex-based violence against women and girls: new frontiers and emerging issues,” Human Rights Council, Fifty-ninth session, June 16, 2025.

SCHEDULE B – STATUTES / REGULATIONS / BY-LAWS

***Human Rights Code*, R.S.O. 1990, C. H.19**

Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

CHP CANADA, et al		**THE CITY OF HAMILTON**
APPLICANTS (Appellant on Appeal)	-and-	RESPONDENT (Respondent on Appeal)

Court File No.: COA-25-CV-0667

COURT OF APPEAL OF ONTARIO

PROCEEDING COMMENCED AT TORONTO

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