

COURT OF APPEAL FOR ONTARIO

CITATION: Christian Heritage Party of Canada v. Hamilton (City), 2025 ONCA  
700

DATE: 20251014

DOCKET: M56270, M56297, M56312, M56314 (COA-25-CV-0667)

Gomery J.A. (Motion Judge)

BETWEEN

Christian Heritage Party of Canada, CHP Hamilton-Mountain Electoral District  
Association

Applicant  
(Appellants/Responding Parties)

and

City of Hamilton

Respondent  
(Respondent/Responding Party)

Garifalia Milousis and Jeremy Bieman, for the appellants/responding parties

Stuart Zacharias, for the respondent/responding party

Emma Phillips, Mary-Elizabeth Dill and Kailun Chen, for the proposed  
intervener/moving party Egale Canada

Lisa Bilty, for the proposed intervener Free Speech Union of Canada

Hatim Kheir, for the proposed intervener Charter Advocates Canada

Joel Persaud, for the proposed intervener Association for Reformed Political Action

Heard: September 24, 2025

REASONS FOR DECISION

[1] Egale Canada (“Egale”), Free Speech Union of Canada (“FSUC”), Charter Advocates Canada (“Charter Advocates”), and Association for Reformed Political Action (“ARPA”) seek leave to intervene as friends of the court in this appeal, pursuant to rr. 13.02 and 13.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] For the reasons that follow, Egale and ARPA are granted leave to intervene, and the motions by FSUC and Charter Advocates are dismissed.

### **Background**

[3] In July 2023, the respondent City refused an advertisement submitted by the appellants for posting on the Hamilton transit system. The appellant, Christian Heritage Party of Canada, describes itself as a political party founded on Judeo-Christian principles that advances a platform consistent with Christian values.<sup>1</sup> The proposed advertisement featured a photo of a smiling woman and the statement: “Woman: An Adult Female. Bringing Respect for Life and Truth to Canadian Politics[.] The Christian Heritage Party of Canada” accompanied by the Party’s website. In the letter explaining its decision, the City said that the proposed advertisement jeopardized its ability to provide a safe and welcoming transit system because of the harms the advertisement could generate for the transgender community. It acknowledged CHP’s right to freedom of expression

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<sup>1</sup> CHP-Hamilton-Mountain Electoral District Association is the Party’s local riding association in Hamilton. I will refer to the appellants collectively as CHP.

and invited CHP to propose how the City might minimize infringing this right short of accepting the advertisement as submitted. Rather than engaging in further exchanges, CHP applied for judicial review of the City's decision.

[4] The Divisional Court dismissed the appellants' application. It noted that the City consulted with CHP and other stakeholders before concluding that the advertisement could harm members of the transgender and LGBTQ communities, and invited CHP's further feedback on its decision. Based on the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the court found that the City's process was procedurally fair, proportionate and reasonable; it balanced the City's statutory interest, articulated in its policies, in providing a public transit system that was safe and welcoming for all people, and CHP's democratic and foundational *Charter* right to freedom of speech and expression.

[5] The court concluded that the City's decision also complied with the principles set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 and *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395. The decision had an internally coherent logic, showed a rational chain of analysis and provided justifications related to the facts and law before it.

[6] Finally, the Divisional Court found that the City did not act in a biased and discriminatory manner towards CHP.

### **The principles governing motions for leave to intervene**

[7] In determining motions for leave to intervene as a friend of the court, the court will generally consider “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 & Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164, at p. 167; *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29, at para. 8; and *Caruso v. Law Society of Ontario*, 2025 ONCA 270, at para. 6.

[8] The test for granting leave to intervene is more relaxed in constitutional cases: *Animal Justice v. Ontario (Attorney General)*, 2024 ONCA 941, at para 12. Constitutional cases may have a wide impact on the rights of others who are not parties to the litigation. Interventions provide affected individuals and groups with an opportunity to be heard and give the court perspectives on the historical and sociological context of the issues raised.

[9] Generally, a proposed intervener in constitutional litigation meets at least one of the following criteria: (1) the applicant has a real, substantial and identifiable interest in the subject matter of the proceedings; (2) the applicant has an important perspective distinct from the immediate parties; or (3) the applicant is a well-recognized group with a special expertise and a broadly identifiable membership base: *Reference re Greenhouse Gas Pollution Pricing Act*, at para. 8.

[10] The overarching consideration, however, is whether a proposed intervener can be of assistance to the court in providing a different perspective that is not already addressed by the parties: *Fair Voting BC v. Canada (Attorney General)*, 2024 ONCA 619, at para. 11; *Solmar Inc. v. Hall*, 2025 ONCA 570, at para. 11. Leave to intervene may be denied where the submissions of the proposed intervener are merely duplicative of the submissions of others: *Fair Voting BC*, at para. 13.

### **Egale**

[11] Egale is a not-for-profit organization that has been active for almost 40 years. Its mission is to promote equality and justice in Canada for two-spirit, lesbian, gay, bisexual, trans and intersex persons. Its expertise and experience on the systemic and historical disadvantages faced by trans and non-binary people in Canada have been recognized: *General Manager, OHIP v. K.S.*, 2024 ONSC 130 (Div. Ct.), at para. 9. Egale has intervened in 46 cases before various Canadian courts, including this proceeding in the Divisional Court, and it understands the intervener's role.

[12] Egale was granted leave to intervene by the Divisional Court. The City takes no position on Egale's motion for leave to intervene on the appeal. CHP opposes it.

[13] Having considered the submissions by Egale and CHP, I conclude that Egale should be granted leave to intervene.

[14] CHP argues that Egale's participation as an intervener in the Divisional Court was unhelpful. It suggests that Egale overstepped its role before the Divisional Court by advocating for a specific outcome and that there was no indication that the Divisional Court relied on its submissions.

[15] I reject these submissions. A proposed intervener's lack of indifference to the outcome of a proceeding is not a reason to deny it the right to intervene, so long as it can make a useful contribution to the analysis of the issues before the court: *Oakwell Engineering Limited v. Enernorth Industries Inc.*, 2006 CanLII 60327 (Ont. C.A.), at para. 9, and the caselaw cited therein. In considering whether the City's decision was reasonable, the Divisional Court referred to Egale's supporting submissions on the legal and social status of and challenges faced by transgender and gender non-conforming individuals.

[16] CHP contends that Egale's arguments largely duplicate the City's submissions. I do not agree. Egale represents a distinct community with a real, substantial and identifiable interest in the subject matter of this proceeding. Its perspective is distinct from that of the City.

[17] Finally, CHP argues that Egale seeks to impermissibly enlarge the scope of this litigation by advancing s. 7 *Charter* arguments and filing additional evidence.

[18] I agree that none of the parties granted leave to intervene should be permitted to supplement the factual record by filing additional evidence. My order will reflect that. I am not, however, prepared, at this stage, to limit Egale's ability to argue whether the reasonableness of the City's decision should be assessed in light of s. 7 of the *Charter*. This submission does not raise a completely new issue but rather elaborates on why it was reasonable for the City to decide that posting the proposed advertisement could harm transgender and non-binary individuals. This does not foreclose the possibility that the panel that hears the appeal will determine that the s. 7 argument does not need to be considered.

### **ARPA**

[19] ARPA is a non-profit Reformed Christian political and legal advocacy organization closely affiliated with several Reformed denominations in Canada. Part of its mission is to present a Reformed Christian perspective on public policy and legal issues to governments and courts. ARPA contends that it has a distinct interest in the appeal, as the issues engaged may have serious ramifications for those Reformed Christians who believe that "human beings are innately and unchangeably male or female." It has previously been granted leave to intervene in 22 proceedings involving issues of freedom of expression, freedom of religion, or other fundamental human rights.

[20] CHP takes no position on ARPA's proposed intervention. The City opposes it, on the basis that: (1) its submissions on the appeal duplicate CHP's

submissions; (2) insofar as it raises new issues, they would impermissibly expand the litigation; and (3) ARPA cannot act as an impartial friend of the court, given its own history with the City and the role played by its legal counsel in other proceedings.

[21] I conclude that ARPA's motion to intervene should be granted.

[22] ARPA is a well-recognized group with a special expertise and a specific membership base, and a real, substantial and identifiable interest in the subject matter of the proceedings. ARPA's submissions will focus on the characterization of the speech in CHP's advertisement and the need to protect it, rather than on administrative law principles in play. ARPA is not a political party like CHP. I am satisfied that it has a perspective distinct that could assist the court, even though its views overlap significantly with those advanced by CHP.

[23] The City contends that ARPA's proposed submissions encourage the court to consider the impact of the City's decision on freedom of conscience and religion under s. 2(a) of the *Charter*, even though CHP focused uniquely on its right to freedom of expression under s. 2(b) of the *Charter* when it sought to persuade the City to allow the advertisement on the transit system. At the motion hearing, ARPA's counsel affirmed that its proposed argument focuses on freedom of expression. In any event, I am not prepared to limit ARPA's submissions on the considerations that the City should have taken into account, just as I was not

prepared to limit Egale's submissions on this point. It will again be up to the panel that hears the appeal to determine whether any s. 2(a) arguments advanced by ARPA are relevant or helpful.

[24] Finally, I do not find that ARPA is precluded from acting as a friend of the court based on its past conduct or the conduct of its lawyer.

[25] The City argues that ARPA is unacceptably partisan. ARPA has itself engaged in litigation against the respondent over transit advertisements advocating its beliefs and has threatened litigation against the City in relation to another advertisement. ARPA's lawyer has acted for CHP in other litigation pitting it against the City.

[26] ARPA and CHP are separate organizations. As noted in *Bowman v. Ontario*, 2021 ONCA 795, at para. 7, an intervener is neither required to have "no connection to the underlying dispute" nor to be a "disinterested non-party". On the contrary, "it is frequently the intervener's 'interest' and experience in the matter that enables it to make a useful contribution to the appeal by providing a perspective on the issues that differs from the immediate parties". The question is whether a proposed intervener was involved in the very events that gave rise to the litigation before the court.

[27] The record before me does not indicate that ARPA was involved in the discussions between the City and CHP that culminated in the City's refusal to post

CHP's advertisement. ARPA clearly has an indirect interest in the outcome of this appeal, given its own battles to place advertising on various municipal transit systems, including the City's. This does not, in my view, disqualify it from assisting the court.

[28] I come to the same conclusion with respect to the City's argument that ARPA is too partisan because its counsel has acted for CHP in similar litigation.

[29] This is not a situation like *Caruso*. That appeal involved a self-represented paralegal appellant who was also the president of the proposed intervener, the Canadian Paralegal Alliance. Wilson J.A. concluded that the Alliance could not provide the court with any meaningful assistance. Beyond this, she observed that the appellant filed an affidavit and made submissions on the Alliance's behalf, making him effectively the face and voice of the proposed intervener.

[30] It is not uncommon for counsel for an intervener to have some connection to one of the parties. In *Henry v. Zaitlen*, 2023 ONCA 740, the Ontario Trial Lawyers Association sought leave to intervene. The respondent objected, in part on the basis that the plaintiffs' lead counsel sat on the Association's Executive Committee. Fairburn A.C.J.O. rejected this argument, remarking at para. 20 that:

The simple fact that counsel to a party is also involved in a legal organization that intervenes in an appeal runs no increased risk of duplication. It is not unusual and, indeed, expected that counsel will engage with legal organizations within their areas of legal expertise. Counsel should be applauded for contributing to legal

organizations on a *pro bono* basis and the law should not develop in a way that would place a chill upon this type of laudable activity. This is not an unusual situation and it is one where we fall back on the strong presumption of professionalism.

[31] The connection between ARPA's counsel and CHP is more remote than the connection at issue in *Henry v. Zaitlen*. There is no basis to assume that ARPA's counsel will not act professionally.

### **Free Speech Union**

[32] FSUC was incorporated in late 2024 "in response to growing concerns regarding the erosion of free expression and robust debate, as well as increasing cancel culture and intimidation in response to heterodox ideas." It describes itself as a non-partisan, mass-membership organization dedicated to the defence and promotion of freedom of expression in Canada. FSUC seeks leave to intervene to urge that free expression is threatened in Canada and that an administrative limit on it is unreasonable if based on a desire to avoid offending a majoritarian belief.

[33] CHP takes no position on FSUC's motion. The City opposes it.

[34] FSUC has not demonstrated how its participation would assist the court. I conclude that its motion should be dismissed.

[35] FSUC is a newly formed organization with no experience as an intervener. This is not in itself disqualifying. Its supporting affidavit, however, provides little or no insight into its membership, its approach to intervention, or any broader mission

beyond advocating for a particular approach to *Charter* interpretation that emphasizes freedom of speech and belief. A “purely jurisprudential interest, without more, is insufficient” to qualify as a friend of the court: *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67, at para. 24.

[36] FSUC’s draft factum, moreover, seeks to reframe the issues on appeal, notably by contending that the Divisional Court ought to have applied a correctness standard in assessing the City’s decision.

[37] FSUC’s proposed submissions otherwise largely duplicate those advanced by the appellants. I am unable to discern any distinct perspective.

### **Charter Advocates**

[38] I likewise conclude that Charter Advocates’ motion to intervene should be dismissed.

[39] Charter Advocates is a not-for profit charity registered with the Law Society of Ontario as a civil society organization. Its eight lawyers and staff provide *pro bono* legal services to clients advocating for *Charter* rights, including freedom of belief and expression under s. 2(b). Through its submissions as intervener, Charter Advocates seeks to ensure that the language of s. 1 of the *Charter* and the justification required under *Oakes* “appropriately guid[e] the *Doré* proportionality analysis”.

[40] CHP once again takes no position on Charter Advocates' motion, while the City opposes it.

[41] Charter Advocates has not previously been granted intervener status. Its lawyers have, however, acted for other interveners. I am willing to assume that they are aware of what the role involves.

[42] I do not find, however, that Charter Advocates meets the criteria for interveners set out in *Reference re Greenhouse Gas Pollution Pricing Act*. It has not shown that it has a real, substantial and identifiable interest in the subject matter of the proceedings; as already mentioned, a proposed intervener's desire to shape the law, standing alone, does not constitute an interest sufficient to ground leave to intervene. Charter Advocates does not identify a distinct perspective, distinct from that of the immediate parties, that could assist the court or put the issues in dispute in historical or sociological context. Its supporting affidavit does not describe a membership or particular constituency that could be impacted by the court's determination of the issues.

### **Disposition**

[43] The motions by Egale Canada and Association for Reformed Political Action are granted on the following terms:

- (1) Egale Canada and Association for Reformed Political Action are each granted intervener status;

- (2) Each will take the record as it is. They shall not file any additional evidence or otherwise supplement the factual record;
- (3) Each shall make reasonable efforts to avoid duplicating the parties' submissions;
- (4) Each may file a factum of no more than 15 pages in length, by no later than November 7, 2025;
- (5) In response to Egale Canada's factum, the appellants may file a factum of no more than 10 pages in length by no later than December 5, 2025;
- (6) In response to Association for Reformed Political Action's factum, the respondent City may file a factum of no more than 10 pages in length by no later than December 5, 2025;
- (7) Egale Canada and Association for Reformed Political Action are each granted a maximum of fifteen minutes to make oral argument at the hearing of the appeal; and
- (8) Neither shall be entitled to, nor subject to, any costs of this motion or of the appeal.

[44] The motions by Free Speech Union of Canada and Charter Advocates Canada are dismissed, without costs.

“S. Gomery J.A.”