File No. 260/20 and 261/20

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Between:

GUELPH AND AREA RIGHT TO LIFE

Applicant

And:

CITY OF GUELPH

Respondent

FACTUM OF THE INTERVENER THE CHRISTIAN HERITAGE PARTY OF CANADA ("CHP")

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PART I: OVERVIEW

1. The reasons given by the Ad Standards Canada Council ("AdStandards") and adopted or affirmed by the Respondent for discontinuing the Applicant's advertisements are unreasonable. The Respondent's musings and conclusions about the meaning of "human", "rights", "personhood", and "agency" are uninformed, selective, biased, and inappropriate. Its attempt to promulgate authoritative definitions of such broad and contested moral, philosophical, and political terms in order to censor differing understandings and uses is illegitimate and alarming.

2. The general public is not looking for legal advice to a phrase on an ad by an activist group. Nothing about these ads would lead a reasonable person to think that they are making claims about the current state of Canadian law (criminal or otherwise). The ads obviously present moral appeals, arguments, and opinions. The only "misleading" the Respondent could seek to prevent here is the presentation of moral or philosophical views with which it disagrees.

3. The Respondent has no legitimate or pressing interest in preventing people from encountering a moral, philosophical, or political position that it views unfavorably. More specifically, it has no legitimate interest in censoring the view that unborn children are humans or persons, that they have (natural or moral) rights, or that they ought to be given greater protection in law. These are reasonable and legitimate beliefs to hold and to share in a free and democratic society. Peacefully communicating such beliefs violates no law and infringes nobody's rights (moral or legal).

4. This Court cannot and need not resolve age-old debates about the moral or ontological status of unborn children. In the context of this case, the fact that an unborn child is not a "human being" in the technical legal sense of the *Criminal Code*'s homicide provisions (though it is a "child" therein) is irrelevant, and censorship of the term "human" or of personal pronouns in reference to

unborn children in advertising is an utterly unjustified violation of freedom of thought, belief, opinion, and expression and is incompatible with a free and democratic society.

PART II: FACTS

5. The CHP takes no position on the disputed facts of this case. The Respondent indicates that it adopted or substantively agreed with the reasons of AdStandards.[1] Therefore, the CHP treats the reasons of AdStandards as the Respondents' reasons also. This factum will refer to the ads in question as the Applicant does: Ad #1 ("Life should be the fundamental human right"), Ad #2 ("Human rights should not depend on where you are") and Ad #3 ("What about her choice?").

PART III: ISSUES AND ARGUMENT

A. It is not misleading to use the term "human", "rights", or "human rights" in reference to an unborn child and prohibiting this would be an egregious ideological imposition

1. *The meaning of "human" and "human being"*

6. The Respondent is not here censoring a demonstrably false claim. First of all, ads #1 and #2 are obviously phrased as statements of opinion or argument – hence "should" – as the Applicant rightly points out. However, the Respondent apparently disputes what it (or AdStandards) perceived to be an underlying premise of the argument of ads #1 and #2 – namely that an unborn child or fetus is in fact "human". The Respondent purports to show this underlying premise to be false by relying on an irrelevant authority – a logical fallacy.

7. Faced with complaints over an ad saying, "Life should be the most fundamental human right" and another saying, "Human rights should not depend on where you are", the Respondent, for reasons that are not explained, decided to rely on the definition of "human being" in the homicide provisions of the *Criminal Code* for a totally unrelated purpose – regulating speech.

[1] Respondent's Factum, at paras. 22 and 27.

8. The purpose of the *Criminal Code* and the definitions contained therein is to demarcate criminal conduct for prohibition, prosecution, and punishment. Its purpose is not to dictate orthodox positions in scientific or philosophical debates. Its purpose is not to provide an authoritative scientific, sociological, moral, or philosophical definition of human or human being, or even to provide a *general* legal definition. The definition of "human being" in the *Criminal Code*, which dates back all the way to the original 1892 version of the statute, is a technical legal one with a specific and narrow purpose, namely to define the homicide offences and to distinguish these from other offences including those in which unborn children were victims, such as "killing unborn child" or "procuring abortion".[2] In fact, the term "human being" does not appear in the current *Criminal Code* until s. 222 and thereafter appears only in homicide-related provisions.[3]

9. In the context of this case, the *Criminal Code* definition of "human being" is irrelevant. Of actual relevance to determining whether an advertisement aimed at the general public will likely mislead them is the ordinary meaning of a word. If anything, the statement that an unborn child or fetus *is human* is demonstrably true. When humans reproduce, they produce new humans. This is basic, common knowledge. The plain or common meaning of "human" and certainly the scientific meaning[4] apply to unborn (human) children, (human) embryos, (human) fetuses.[5] At

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[2] See *The Criminal Code, 1892,* 55-56 Victoria, c. 29, at sections 219 (when child becomes human being), 271 (Killing unborn child), and 272 (procuring abortion). See also Law Reform Commission of Canada, "Crimes Against the Foetus" (1989), online: http://www.lareau-law.ca/LRCWP58.pdf ["**Law Reform Commission**"].

[3] Section 233 (infanticide) drops the term "human being" and uses "newly-born child". Section 238 (Killing unborn child in the act of birth) remains a criminal offence in which an unborn child is the victim.

[4] See e.g., Dianne Irving, "When do human beings begin? 'Scientific' myths and scientific facts" *International Journal of Sociology and Social Policy* 1999, 18(3/4): 22-47, where she writes, "[U]pon fertilization, parts of human beings have actually been transformed into something very different from what they were before; they have been changed into a single, whole human being. […] the sperm and the oocyte cease to exist as such, and a new human being is produced." (emphasis added) (**CHP BOA, Tab 2**). See also Law Reform Commission, *supra* note 2, at 25, where it notes that the *Criminal Code* definition of 'human being' does not fit scientific reality.

[5] Though the scientific terms "embryo" and "fetus" refer to the unborn young of other creatures besides humans, *Merriam Webster* notes for embryo and fetus that they refer "especially" and "specifically" "the developing human".

the very least, the onus is on the Respondent to demonstrate that the term "human" in reference to unborn children is likely to mislead people in a manner that would legitimately concern the government and justify censorship. Promoting a moral, philosophical, or political position or belief with which a certain state actor disagrees, of course, does not qualify.[6]

10. Ironically, the very same section (s. 223) of the *Criminal Code* that AdStandards cites to define "human being" uses the term "child" to refer to unborn children. Not surprisingly, dictionaries use the words "person" and "human" to define "child". For example, in the *Merriam Webster Dictionary*, a "child" is "1. a young person especially between infancy and puberty" and "2. A son or daughter of human parents."[7] In *Black's Law Dictionary*, a child is: "1. A person under the age of majority. 2. *Hist.* At common law, a person who has not reach the age of 14. 3. A boy or girl; a young person. 4. A son or daughter. 5. A baby or fetus."[8] Thus, one could reach a conclusion opposite to that of AdStandards even by relying on the very same section of the *Criminal Code*. After all, the unborn child (or fetus) is a *child*, and children are *human*.

11. This Court need only recognize that many people, for scientific, philosophical, moral, and religious reasons believe that unborn children are "humans" or "persons", which is a perfectly legitimate belief to hold, share, defend, and promote in a free and democratic society.[9] These advertisements do not claim to explain the legal status of unborn children under the *Criminal Code*'s homicide provisions or generally in Canadian law, and the public is not looking to a

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[6] AdStandards noted in its reasons that ads must not mislead "with regard to any identified or identifiable product or service" – see Respondent's factum, para 19. There is no relevant "product or service" in these advertisements.

[7] See https://www.merriam-webster.com/dictionary/child.

[8] *Black's Law Dictionary 9th Ed*, Bryan A. Gardner (ed.) (Thomson Reuters: 2009) at 271 (**CHP BOA, Tab 1**).

[9] *Lethbridge and District Pro-Life Association v Lethbridge (City), 2020 ABQB 654*, at paras 80 and 86 ["***Lethbridge***"].

phrase on a poster from an activist group for legal advice. The purported concern about misleading the public is thus either grossly misguided or contrived.

12. The Respondent's selective source citing, narrow defining of terms, and sophistic reasoning would enable widespread censorship on most tenuous or contrived bases. The *Charter* requires that restrictions on expression be *demonstrably* justified.

2. The meaning of "rights" and "human rights"

13. The Respondent specifically takes issue with the phrase "right to life" and "human rights" in these ads[10] and its reasoning would forbid pro-life advertisers from using such terms in reference to unborn children. This is unreasonable. The Applicant notes that its ads offer opinions, which is especially plain in ads #1 and #2 from the word "should". But it would be inadequate for such speech to be protected only because the statements about rights are framed with "should".

14. Here, again, AdStandards and the Respondent might have been well served by consulting a dictionary. According to *Merriam Webster*, for example, a ***right*** is "something to which someone has a just claim" or "something that one may properly claim as due".[11] What is justly, morally, or properly due to someone (or something) is not necessarily what is *legally* due. Accordingly, *Black's Law Dictionary* defines "right" as follows:

> **Right:** 1. That which is proper under law, morality, or ethics
> 2. Something that is due to a person by just claim, legal guarantee, or moral principle[12]

15. The Respondent should have known that "right" is a very broad term and can refer to a right in a normative sense, not only a legal sense. When it comes to the term "*human* rights", the Respondent's reasoning in this case fares no better. *Merriam Webster* defines ***human right*** as a

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[10] See para 21 and 27 of the Respondent's factum.

[11] See https://www.merriam-webster.com/dictionary/right.

[12] *Supra* note 8, at 1436 (emphasis added) (**CHP BOA, Tab 1**).

"basic right (such as the right to be treated well or the right to vote) that many societies believe every person should have".[13] Note the words "believe" and "should" in the definition. This is no precise, technical, legal term. Even *Black's Law Dictionary* uses similar language:

> **Human rights:** The freedoms, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter of right in the society in which they live.[14]

16. Similarly, academic literature on human rights recognizes the distinction between the morality of human rights and the law of human rights.[15] Both are contested. Scholars and courts still wrestle with the legal status and impact of international human rights instruments. In her introduction to *Human Rights as Politics and Idolatry*, Professor Amy Guttman writes:

> What is the purpose of human rights? What should their content be? When do violations of human rights warrant intervention across national boundaries? Is there a single moral foundation for human rights that spans many cultures, or are there many culturally specific moral foundations, or none? In what sense, if any, are human rights universal? These are among the hard and critical questions raised by the human rights revolution […].
>
> […] Human rights can serve multiple purposes, and those purposes can be expressed in many ways, not only across different societies and cultures, but even within them.[16]

17. The *Universal Declaration on Human Rights*[17] does not provide a clear answer on whether the unborn are included in its terms such as "human persons" and "everyone". The question is debated.[18] The *American Convention on Human Rights*[19], by contrast, is more clear on the

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[13] Online: https://www.merriam-webster.com/dictionary/human%20rights.

[14] *Black's Law Dictionary*, at 809 (**CHP BOA, Tab 1**).

[15] See, for example, Michael J. Perry, "Human Rights as Morality, Human Rights as Law", 84 Bol. Fac. Direito U. Coimbra 369 (2008) (**CHP BOA, Tab 3)**. Perry notes, at footnote 17 that while he generally brackets the born/unborn distinction, he has argued that "one who affirms that every born human being has inherent dignity has good reason to affirm as well that every unborn human being has inherent dignity."

[16] Amy Guttman, "Introduction" in Michael Ignatieff, *Human Rights as Politics and Idolatry*, ed. Amy Guttman, (Princeton University Press, 2003) at viii (**CHP BOA**, **Tab 4**) ["**Guttman**"].

[17] Online: https://www.un.org/sites/un2.un.org/files/udhr.pdf.

[18]. See e.g., Thomas Finegan, "Conceptual Foundations of the Universal Declaration of Human Rights: Human Rights, Human Dignity and Personhood" , 37 *Australian Journal of Legal Philosophy* 182 (2012), at 185 and footnote 7 (**CHP BOA, Tab 5**) ["**Finegan**"].

[19] This Convention is a multilateral treaty of the Organization of American States, which does not include Canada.

matter, saying in Article 4: "1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception." This is one possible position for the law to embody and a legitimate one to advocate in a free society.

18. The point is not that any particular human rights document should govern the meaning of words used in advertising in Canada, but that laws can take differing positions on moral issues, laws differ between jurisdictions, and (at least in a free and democratic society) laws are debated and often changed. With few exceptions, words are not defined in a statute or in common law for the purpose of regulating debate. An exception might be, for example, "hate speech" – a term defined in law specifically to regulate speech – but even this term is not defined in law for the purpose of regulating debate *over the meaning of the term itself*. People may still debate what constitutes "hate speech" and to what extent it should be prohibited by law.

19. Not only is the Respondent ill-suited to regulate profound and complex debates over the meaning and content of human rights and use of that term, it is inappropriate for it to do so.

3. *Government cannot restrict "rights talk" to one side of a moral or political debate*

20. Government cannot reserve the use of the language of "rights" or "human rights" for one side of the debate on one the most fraught, complex moral and political issues of our time. Unlike restrictions on the form, manner, or context of expression – for example, a rule limiting the size of billboard or the use of graphic images – the kind of censorship at issue in this case is aimed not only at the substantive content rather than form, but also on a particular viewpoint or belief – at one side of an important debate.[20] This is arguably more dangerous and insidious than a rule, for example, against any advertising related to abortion. Such a rule would require both sides of

[20] See *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69, Iacobucci J. in dissent, but not on this point, at paras. 32-36.

the debate to find other forums. In that sense at least, it would be fair. To give another example: Would it be worse for a municipality to accept no political advertisements, or to only accept ads from a particular political party?

21. To dictate which side of a political or moral debate may use which terms for which purposes would be for state actors, in effect, to regulate the substance of the debates themselves. Imagine a pro-life state actor telling a pro-choice group it may not use terms like liberty or dignity in its advertisements, because based on its preferred definition of dignity, abortion is not dignified. It would not be a fair debate if one side is given authority to define the terms for both sides. That a government actor would purport to do so in a "free and democratic society" with a constitutional guarantee of the fundamental freedom of thought, belief, opinion, and expression, and free media for expression, is deeply disturbing.

22. You are not free to express your beliefs or opinions if you may only do so using state-approved language or state-preferred definitions of contested moral, philosophical, or political terms. If pro-life individuals, organizations, advocacy groups, or political parties lack the freedom to advocate for and defend their position using terms such as "rights" or "choice" or "human" or personal pronouns, they cannot effectively express their beliefs and they are no longer free to participate in Canadian social and political life, which is at the core of section 2(b).[21] Both sides must be free to use language in accordance with their beliefs.

23. The language of "human rights" is a contemporary *lingua franca* of moral and political discourse. Its meaning and content are deeply contested and continually debated.[22] It cannot be stripped from one side of the abortion debate, no matter how much a state actor would like to

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[21] *Lethbridge*, *supra* note 9, at para 86.

[22] See Amy Gutman, *supra* note 16 (**CHP BOA, Tab 4**).

take sides or to simply quiet the controversy. If allowed to stand, the Respondent's reasoning would in principle permit government actors to control moral and political debates by dictating the meaning of contested but important terms.

4. *Censoring appeals or arguments to reform the law is constitutionally impermissible*

24. René Cassin, one of the authors of the *Universal Declaration of Human Rights*, famously noted the problem that "persons existed who had no legal personality."[23] That is to say, the law has not always treated human beings or human persons as *legal* persons possessing legal rights and enjoying a basic status under and protection of the law. Whether this is the case with unborn children and the law in Canada and other jurisdictions is debated. In any case, in this well-known saying of Cassin, "persons" is not used a legal term, but in a moral or philosophical sense, in distinction from legal personhood or "legal personality".

25. The ads do not claim to explicate the current state of Canadian law. To the extent they have political or legal implications, it is only indirectly, through the appeal they make to citizens to recognize and respect the lives of the unborn, which if successful might lead people to view legal protections for the unborn more favourably. But whether direct or indirect, appeals to one's fellow citizens to change their mind or change the law are an essential element of life in a free and democratic society.[24] Notably, the ads do not call for any legislative reform (at least not directly), but this Court should take care to not give tacit approval to censoring political speech that directly calls for legal reform in this area.

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[23] Quoted in Finegan, *supra* note 18, at 208 (**CHP BOA, Tab 5**).

[24] *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31, at para 77 ["***Greater Vancouver***"].

B. It is not "misleading" to use personal pronouns to refer to an unborn child

26. The "What about her choice?" advertisement makes a rhetorical point and moral appeal. Consider, for example, an animal rights advertisement with a picture of a cow and the words, "Don't eat me! Go Vegan. Support animal rights." By the Respondent's reasoning, this ad would be (a) misleading because pronoun "me" implies personhood, but cows are not legal persons; (b) misleading because cows do not have legal rights; and (c) disparaging of people who eat meat because it implies that they eat persons who wish not to be eaten.

27. Note the tenuous line of reasoning that is needed here in order to reach the conclusion that the Applicant's statement in ad #3 is false. First it assumed that the use of the pronoun "her" implies personhood. Then it is assumed that personhood must mean legal personhood. Yet the pronoun "her" does not necessarily imply personhood, philosophically let alone legally. It could simply be implying that the fetus pictured has XX chromosome or has passed the 8-week gestational period where sex organs have developed – making it a biological human female organism for which the female-specific gendered pronoun "her" can be used.

28. Even if it does imply personhood in a moral or philosophical sense, personhood has for millennia been the subject of philosophical debate, a debate that has by no means been resolved.[25] No one (especially not government) can definitively state that a fetus is or is not a person. There are arguments on both sides of the debate for why one may accord personhood or not to a fetus. This is not a debate for the government to "resolve" or regulate. The government may define "human

[25] See Jane English, "Abortion and the Concept of the Person," *Canadian Journal of Philosophy,* 1975, Vol. 5, No. 2 (Oct., 1975), pp. 233- 243 (**CHP BOA**, **Tab 6**). Dr. English notes that "foes of abortion propose sufficient conditions for personhood which fetuses satisfy, while friends of abortion counter with necessary conditions that fetuses lack. But these both presuppose that the concept of a person can be captured in a strait jacket of necessary and/or sufficient conditions." Because of deep disagreement on a presuppositional level, English concludes that "a conclusive answer to the question whether a fetus is a person is unattainable." Even if the Respondent is so bold as to claim to know the answer, the issue is whether it can impose its conclusion through censorship.

being" or "person" in a statute for legal purposes, but it can no more dictate the moral or philosophical meaning of "person" than it can dictate the scientific meaning of "human".

29. There is nothing false or falsifiable in saying, for example, that an unborn child is a person and that elective abortion violates an unborn child's rights. Notably, a prominent pro-choice intellectual would agree, though she also argues that a pregnant woman's rights may outweigh the unborn child's rights.[26] That the unborn are persons with (moral or natural) rights is a legitimate moral and philosophical position to hold. It can only be "misleading" in that it might be considered contrary to prevailing opinion on what rights are and who gets them – i.e. heretical or "politically incorrect". Excluding such messages – and the messengers behind them – from public spaces requires *demonstrable* justification. In light of the foregoing analysis of the multiple and contested meanings of the terms "human", "rights", and "human rights", the justification proposed by the Respondent after the fact in this case is tenuous at best.

C. It is not misleading to refer to an unborn child's "choice"

30. The term "choice" here appears to be used in ad #3 for rhetorical purposes, in light of the common framing of the abortion debate as "pro-life v. pro-choice". The point might be to appeal to those on the "other side" of the debate to consider whether abortion does not, in a sense, take away someone's "freedom of choice" even as it involves the exercise of "choice" by those who seek and perform the abortion. The Respondent may disagree with the point trying to be made, or not appreciate the rhetorical technique, but it cannot reasonably deem it to be "misleading" in any sense that merits government censorship.

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[26] Judith J. Thomson, "A Defense of Abortion" *Philosophy and Public Affairs*, Vol. 1, No. 1 (1971) (**CHP BOA, Tab 7**).

31. It is highly doubtful that people would be misled by this ad into thinking that unborn children, as unborn children, make "choices" the way you or I do as adults, though it should be noted that the issue of whether or to what extent an unborn child exercises choice or agency is not as simple as AdStandards and the Respondent assume. Nor is it clear why the Respondent should be concerned that someone might misunderstand the ad in this way.

32. Is AdStandards or the Respondent genuinely concerned that people might be scientifically misinformed about the mental capacities of a fetus *qua* fetus? Is AdStandards or the Respondent even equipped to determine whether people are being misinformed? Are they certain that unborn children exercise no agency or choice? Agency means "the capacity, condition, or state of acting or of exerting power,"[27] in which sense many organisms have agency, including unborn children, who passively exercise the will to live, and who are physically active very early in their development and responsive to stimuli. Can the Respondent say with certainty that a fetus never chooses to move its legs or suck its thumb? What is its definition of "choice" here? Does the Respondent know whether any humans truly have the capacity of free choice, or are the determinists correct that we lack it? Here, again, AdStandards and the Respondent rush in beyond their depth, reaching swift conclusions and dictating resolutions to deep debates.

33. In any case, it is perfectly reasonable and legitimate to argue that abortion deprives unborn children of their freedom of choice, even if we qualify freedom of choice to mean freedom of *conscious* choice or *self-aware* choosing. The argument is that an unborn child has a radical or inherent capacity to exercise reason, though that capacity may be latent, as it is with a newborn baby or even a sleeping adult. In this sense, ending an unborn child's life removes their freedom

[27] *Merriam Webster* online: https://www.merriam-webster.com/dictionary/agency.

to make (future) choices, just as killing a baby or adult would deprive him or her of the same freedom (though the latter may exercise the freedom to make conscious choices in the near*er* future). The freedom to choose is always future. In the moment of choosing between A or B, the freedom to choose disappears and the choice is in the past.

34. A person who is in a coma, or a person who is simply sleeping, does not make conscious choices. Yet people are perfectly capable of understanding what someone means be saying that we should respect the "freedom of choice" of a baby or a sleeping or comatose adult by not killing them. Here again, the Respondent dived into superficial philosophical and moral reasoning. Its dubious reasoning and conclusions are the purported "demonstrable justification" for the censorship. Again, this Court need not resolve these debates. This Court need only find that it is inappropriate for a municipal employee to impose resolutions to such debates by deeming one side of the debate to be wrong and excluding them from an important public forum.

D. To morally critique a specific act is not to disparage persons who have engaged in or may engage in that act; such reasoning would stifle moral and political debate

35. If moral criticism of human action amounts to an attack on the dignity of persons who engage in such an action, and such attacks are justly prohibited in advertising, then no moral criticism in advertising would be permissible. Mothers Against Drunk Driving would need to close up shop for "disparaging" alcoholics. People for the Ethical Treatment of Animals would need to cease its advertising campaigns so as not to disparage meat eaters and animal product consumers. Such reasoning, if consistently applied, would not only stifle political and public policy debate, but would make public appeals for self-improvement or social reform impermissible. In order to have an ethic at all, drawing ethical distinctions with respect to human conduct is necessary.

36. The Supreme Court of Canada affirmed in *Whatcott* that sexual conduct and sexual orientation can be differentiated for certain purposes and the former may be morally evaluated and critiqued, subject to the narrow limit that such critique not take the form of hate speech.[28] Certainly, abortion is not central to women's identity as sexual intimacy is to a gay persons' identity. Nor is the Respondent alleging that the Applicant engaged in hate speech.

37. With respect to ad #2, it cannot reasonably be said to advance a claim that late-term abortion is common (in comparison to early-term abortions). Ad #2 makes the point that birth is arbitrary as a starting point for protecting someone's life. The focal point is the distinction between being inside or outside the womb – hence "*where*" the child is, not how far along. In any case, it seems odd that the Respondent should consider the (supposedly implied) notion of late-term abortion being common as disparaging to women, when the Respondent seems confident that children have neither rights nor personhood before they are born.

E. The indispensability of free political debate and access to public spaces

38. Political participation is at the core of what section 2(b) of the *Charter* protects. Political expression and debate belong in public forums like this.[29] Reaching large audiences through such mediums is necessary for meaningful and effective political engagement and advocacy. It would be an immense disadvantage for pro-life individuals or organizations to be shut out from Canada's advertising spaces. AdStandards' reasoning in this case could be used to shut out pro-life individuals and organizations from advertising spaces across the country. Even if pro-life entities could find other ways to reach people with their message and arguments, the fact of being shut out of public forums like municipally owned advertising spaces sends a powerful

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[28] *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11 at paras 122, 124.

[29] *Greater Vancouver*, supra note 24, at paras 41 and 42.

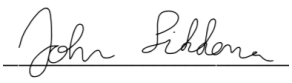
message to the public that the views and arguments of pro-life entities are illegitimate and unwelcome in the public square and beyond the scope of constitutional protection.

39. It is characteristic of a totalitarian society to regulate the meaning and use of language for the purpose of entrenching uniform political and ideological views in society,[30] as famously derided in the writings of George Orwell and Solzhenitsyn, among others. To dictate the meaning of words or control the use of language is to attempt to control thought. To say that someone, in making a moral appeal or argument or expressing an opinion, may not use a term in a way that differs from how it is used in a particular part of a statute is not only absurd but would stifle debate over what the content of the law should be. It would be absurd to censor ads for women's rights, for example, on the basis that the law does not protect the rights for which the ads plead. Free and open debate about what the law should be is essential to a free and democratic society.[31]

PART IV: ORDER SOUGHT

40. These interveners seek no costs and ask that no costs be ordered against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of May, 2021.



John Sikkema
Counsel for the intervener, the Christian Heritage Party

[30] See L'Heureux-Dubé J. in *Committee for the Commonwealth of Canada*, [1991] 1 S.C.R. 139, at p. 174, and quoting Cory J. at 181-182.
[31] *Greater Vancouver*, *supra* note 24. *CHP v. City of Hamilton*, 2020 ONSC 3690, at para 39.

Schedule A

Authorities Referred to by the Intervenor, the Christian Heritage Party

Cases

1. *Lethbridge and District Pro-Life Association v Lethbridge (City),* 2020 ABQB 654.

2. *Whatcott v Saskatchewan Human Rights Tribunal,* 2013 SCC 11

3. *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69.

4. *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31.

5. *Committee for the Commonwealth of Canada*, [1991] 1 S.C.R. 139.

6. *CHP v. City of Hamilton*, 2020 ONSC 3690.

Statutes

Criminal Code, R.S.C. 1985, c. C-46, sections 222-238.

The Criminal Code, 1892, 55-56 Victoria, c. 29, sections 219, 271, 272.