



Court File No. S-252688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF A STATUTORY APPEAL

**PURSUANT TO SECTION 40 OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183**

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

APPLICATION RESPONSE

Application response of: British Columbia College of Nurses and Midwives (the “College” or the “application respondent”)

THIS IS A RESPONSE TO the notice of application of the Association for Reformed Political Action Canada, filed 25 June 2026 (the “notice of application”).

The application respondents estimate the application will take 2 days.

Part 1: ORDERS CONSENTED TO

The application respondent does not consent to the granting of any of the orders set out in Part 1 of the notice of application, on any terms.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of all of the orders in Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

There are no paragraphs in Part 1 of the notice of application in respect of which the application respondent takes no position on the granting thereof.

Part 4: FACTUAL BASIS

The Applicant

1. The Association for Reformed Political Action Canada (“ARPA Canada”) seeks to be added as an intervenor in this statutory appeal.
2. ARPA Canada states that it has a “genuine interest in the outcome of this appeal arising from its advocacy for the equal right of Christians to pursue professional vocations and participate in public discourse without fear of sanction.” It is also “genuinely concerned that the Panel’s ruling may have a chilling effect on members of its constituency—including nurses—who express Christian views on matters of sex and gender.”¹

The Panel’s decision

3. The Panel’s task was to determine if a regulated professional under its jurisdiction had engaged in unprofessional conduct by making discriminatory or derogatory comments about a protected group while linking those statements to her profession.²
4. The Panel admitted expert evidence to assist in understanding the differences between “sex” and “gender,” as well as the experiences of transgender people.³
5. The Panel examined each of the statements made by Ms. Hamm to determine if each one was discriminatory and/or derogatory and, if so, whether Ms. Hamm had identified herself as a nurse or nurse educator in making them.⁴ The Panel explained that regulators may discipline members of the profession for conduct that occurs outside the practice of the profession where there is a sufficient nexus with the profession.⁵ Accordingly, the Panel limited its consideration to Ms. Hamm’s statements in which she identified herself as a nurse or nurse educator.⁶
6. The Panel noted that Ms. Hamm was free to disseminate her views in the public without identifying herself as a nurse or nurse educator or her affiliation with the College. She was also free to disseminate her views while identifying herself as a nurse or nurse educator if she did so in a manner that is not discriminatory or derogatory.⁷

The Petition

7. Ms. Hamm argues that the Panel made the following errors:
 - (a) It erred in law, or mixed fact and law, in expanding the scope of the term “discriminatory” to include disagreement with gender ideology and transgenderism generally and/or in finding that the Petitioner’s statements were discriminatory (in

¹ Notice of Application of ARPA Canada filed 25 June 2026 (“NOA”) at para. 4(c).

² *British Columbia College of Nurses and Midwives v Hamm*, 2025 BCCNM 1 (“Verdict”) at para. 186.

³ See, e.g., Verdict at paras. 165, 172, 175, 177.

⁴ Verdict at paras. 204–205, 261, Appendix A.

⁵ Verdict at para. 212.

⁶ Verdict at para. 205.

⁷ Verdict at para. 258.

circumstances where the Petitioner was neither providing a service nor offering a benefit), derogatory or otherwise constituted unprofessional conduct;

- (b) It erred in law in finding that the use of sarcasm, mockery, derision or other “tone” which the Panel found unpalatable meant that the Petitioner’s good faith intentions and the social value of her speech, otherwise relevant to the question of “unprofessional conduct,” was invalidated;
 - (c) It erred in law, or mixed law and fact, in finding a sufficient nexus between the impugned comments and the profession;
 - (d) It erred in law by balancing the Petitioner’s *Charter* s. 2(b) rights against a non-existent statutory objective and/or by prioritizing alleged harms to the integrity of the nursing professions;
 - (e) It erred in law in interpreting the protection of s. 2(b) to be limited to political speech, or less available to non-political speech;
 - (f) It erred in law, or mixed law and fact, by favouring one “marginalized” group over another and demeaning women’s rights and protections, contrary to ss. 15(a) and 28 of the *Charter*;
 - (g) It made a palpable error in mixed fact and law by accepting, without reservation, a scientifically novel and unsettled opinion on the multidimensional nature of sex as presented by the BCCNM’s experts without clearly stating why their evidence was favored over that of the Petitioner’s experts;
 - (h) It made an error of law in holding the Petitioner to the standard of a lawyer.⁸
8. Ms. Hamm also argues that the Panel’s penalty decision was unreasonable and disproportionate, and that the cost decision was “crushing and disproportionate to the issue, as well as punitive in nature.”⁹

Part 5: LEGAL BASIS

Principles

- 9. Applicants for intervenor status fall into two broad categories: (a) those who are directly affected by the proceeding in which they seek to intervene, and (b) those who offer a special perspective on an issue of public importance.¹⁰
- 10. An intervenor that is directly affected by the proceeding is “in a position analogous to that of a party. His, her, or its rights will be determined by the appeal.” The proposed intervenor must “demonstrate that the decision in the appeal will directly determine his, her, or its

⁸ Amended Petition to the Court dated 13 September 2025 (“Amended Petition”) at para. 27.

⁹ Amended Petition at paras. 103–104.

¹⁰ *Gibraltar Mines Ltd v Harvey*, 2021 BCSC 927 at para. 10; *Equustek Solutions Inc v Google Inc*, 2014 BCCA 448 (“*Equustek*”) at paras. 5–9.

rights or liabilities. The mere fact that an appeal judgment may set a precedent that will have some effect on the applicant's legal position does not constitute a direct interest." A direct interest has been "contrasted with simply being concerned about the effect of a decision or being affected by it because of its precedential value." Few prospective interveners can demonstrate a direct interest in litigation.¹¹

11. The "fact that the outcome might ultimately adversely impact individual members of a proposed intervenor is not ... sufficient to constitute the necessary direct interest, since the Court would not ... be directly considering their rights or liabilities."¹²
12. Where an applicant does not have a direct interest, the court may nevertheless grant intervenor status if the case "raises public law issues that legitimately engage the applicant's interests, and the applicant brings a different and useful perspective to those issues that will be of assistance in resolving them."¹³ In such cases, the court must consider:
 - (a) the nature of the issue before the court (particularly whether it is a "public" law issue);
 - (b) whether the case has a dimension that legitimately engages the interests of the would-be intervenor;
 - (c) the representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the court; and
 - (d) whether that viewpoint will assist the court in the resolution of the issues or whether the prospective intervenor is likely to "take the litigation away from those directly affected by it."¹⁴
13. In considering interventions based on public interest, "the Court is attempting to ensure that important points of view are not overlooked. Intervenors on this basis must demonstrate that it is in the Court's interest (or, more broadly, in the public interest), rather than their own, for them to be heard."¹⁵
14. Factors that weigh against granting status include "the possibility that an intervenor will expand the proceeding by raising new or immaterial issues, or create an undue burden or injustice for the parties ... by, for example, forcing them to respond to repetitive arguments."¹⁶
15. The scope for such interventions is "very limited":

¹¹ *Equustek* at paras. 5–7.

¹² *Carter v Canada (Attorney General)*, 2012 BCCA 502 ("Carter") at para. 12.

¹³ *Carter* at para. 13.

¹⁴ *Friedmann v MacGarvie*, 2012 BCCA 109 ("Friedmann") at para. 15.

¹⁵ *Equustek* at para. 8.

¹⁶ *Carter* at para. 14.

While the intervenor must be able to present a perspective that is not already before the Court, it must not expand the litigation by raising matters that are not already part of it. Further, it must not attempt to take over or “hijack” the litigation by changing its focus to an issue that is peripheral to the case as it is presented. The niche that may be occupied by an intervenor is, therefore, necessarily a very narrow one. For that reason, intervenor status is not granted as a matter of course.¹⁷

Test for public interest intervention not satisfied

16. In the College’s assessment, ARPA Canada’s materials do not meet the test for a public interest intervention. As set out above, the court must consider:
 - (a) the nature of the issue before the court (particularly whether it is a “public” law issue);
 - (b) whether the case has a dimension that legitimately engages the interests of the would-be intervenor;
 - (c) the representativeness of the applicant of a particular point of view or “perspective” that may be of assistance to the court; and
 - (d) whether that viewpoint will assist the court in the resolution of the issues or whether the prospective intervenor is likely to “take the litigation away from those directly affected by it.”¹⁸
17. This is a statutory appeal of a disciplinary decision. It is crucial to appreciate what the Panel did and did not decide. The Panel examined specific statements made by one registrant of the College and considered whether each statement (a) was discriminatory and/or derogatory, and (b) had a sufficient nexus to the profession.
18. The Panel made findings about sex, gender, and the experience of transgender people in the course of its decision, based on expert evidence, as they were relevant to whether statements were discriminatory or derogatory. ARPA Canada clearly disagrees with these findings, based on the teachings of the Reformed Christian tradition.¹⁹ However, this case has nothing to do with religion or religious views. Christian views played no part in the proceedings before the Panel, nor are they raised in Ms. Hamm’s Petition. ARPA Canada therefore seeks to change the fundamental nature of this proceeding.
19. As for the second criterion, it is not clear that the case has a dimension that legitimately engages ARPA Canada’s interests. ARPA Canada states that its interest in the proceeding “stems from its commitment to defending the equal right of Christians to pursue professional vocations and participate in public discourse without fear of professional sanction. ARPA is concerned that the decision will force medical professionals with traditional Christian views on sex and gender to self-censor out of fear of being

¹⁷ *Equustek* at para. 9.

¹⁸ *Friedmann* at para. 15.

¹⁹ NOA at paras. 14–18; Affidavit of Colin Postma dated 25 June 2026 (“Postma Affidavit”) at paras. 27–34, 37–38.

disciplined.”²⁰ As this case does not engage religion or religious speech, ARPA Canada’s concerns are speculative and risk confusing the issues in this proceeding. Ms. Hamm has never said that her statements stemmed from a religious belief. While ARPA Canada is concerned about “medical professionals with traditional Christian views on sex and gender,” there is no evidence before the court about any such individuals and their beliefs (given that the case has nothing to do with religious beliefs). It is also unclear what “traditional Christian views on sex and gender” are and who exactly holds them—is this meant to encompass only Reformed Christians, or Reformed Christians and other sects of Christianity (and if so, which), or even all Christians?

20. Ultimately, ARPA Canada’s concerns might come into play in a case where a registrant makes statements linked to religious views, but that is not this case. This case focused on a specific set of statements, with no link to religion, that the Panel found were discriminatory or derogatory towards transgender people.
21. As for the third criterion, ARPA Canada appears to satisfy the requirement that it have a broad representative base, having been granted intervener status in several cases, made submissions to government bodies, and published numerous policy reports and commentaries on gender identity.²¹
22. Most importantly, with regards to the fourth criterion, ARPA Canada’s proposed submissions will not assist the court in resolving the issues, and they have the potential to “take the litigation away from those directly affected by it.” Again, this appeal has nothing to do with religion or religious beliefs. ARPA Canada’s arguments based on “philosophical speech”²² also raise new and confounding issues, including what exactly “philosophical speech” *is*. Ms. Hamm has not described her speech in this way, and, accordingly, the Panel did not make findings about what philosophical speech is or whether Ms. Hamm’s speech qualifies as such. ARPA Canada’s frequent references to “political speech”²³ are also at odds with the Panel’s conclusion that the harmful statements in this case were not political speech.²⁴ Moreover, the Petition does not characterize the speech as political and goes so far as to argue that the Panel erred in law by not considering protections of *non-political* speech.²⁵ Finally, ARPA Canada’s proposed submission about the Panel allegedly acting as the “arbiter of truth”²⁶ is an entirely new issue without a link to Ms. Hamm’s arguments in the Petition. It also misconstrues what the Panel actually did, which was a routine exercise of making findings of fact based on expert evidence.
23. In sum, ARPA’s proposed submissions expand the issues beyond those raised by the Petition and risk fundamentally changing the nature of this proceeding.

²⁰ NOA at para. 19.

²¹ Postma Affidavit at paras. 22–26.

²² NOA at paras. 30–34.

²³ E.g. NOA at paras 3, 5(c).

²⁴ Verdict at para. 261.

²⁵ Amended Petition at paras. 68–71.

²⁶ NOA at para. 5(d).

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit of Colin Postma dated 25 June 2026.
2. The pleadings.
3. The Panel's decisions on verdict and penalty/costs.
- ☒ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: 10 July 2026



Signature of Lawyer for Application
Respondent,
Brent Olthuis KC