

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hamm v. British Columbia College of
Nurses and Midwives*,
2026 BCSC 1704

Date: 20260908
Docket: S252688
Registry: Vancouver

In the Matter of a Statutory Appeal

Pursuant to s. 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

And

**College of Physicians and Surgeons of British Columbia, West Coast LEAF,
Egale Canada, and Association for Reformed Political Action Canada**

Intervenors

Before: The Honourable Justice J. Hughes

Reasons for Judgment

Counsel for the Petitioner:

L. Bildy

Counsel for the Respondent:

C. Crane
C. Pang, Articled Student

Counsel for College of Physicians and
Surgeons of British Columbia:

L. Waddell
E. Tsao

Counsel for West Coast LEAF:

M.D. McDonald
K. Feeney

Counsel for Egale Canada:

J. McIntyre

Counsel for Association for Reformed
Political Action Canada:

J. Persaud

Counsel for Vancouver Lesbian Collective:

F. Shapiro-Munn

Place and Dates of Hearing:

Vancouver, B.C.

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Place and Date of Judgment:

Vancouver, B.C.

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Overview

[1] On this application, five organizations seek leave to intervene in a statutory appeal of a decision of the Discipline Committee (the “Panel”) of the respondent, the British Columbia College of Nurses and Midwives (the “College”). The organizations seeking leave to intervene are: the College of Physicians and Surgeons of British Columbia (the “CPSBC”), West Coast LEAF, Egale Canada (“Egale”), the Association for Reformed Political Action Canada (“ARPA”), and the Vancouver Lesbian Collective (“VLC”).

[2] In the underlying proceeding, the petitioner, Amy Hamm, seeks to appeal the Panel’s decision issued March 13, 2025 (the “Decision”), concluding that she committed unprofessional conduct by making statements on various online platforms that were discriminatory and derogatory to transgender people while identifying herself as a nurse or nurse educator.

[3] The statements in issue were made between July 2018 and March 2021 and were alleged to be contrary to the *Health Professions Act*, R.S.B.C. 1996, c. 183 [HPA], and the College’s bylaws and professional standards. The Panel’s task was to determine whether a regulated professional under its jurisdiction engaged in unprofessional conduct by making discriminatory or derogatory comments about a protected group while linking those statements to their profession.

[4] The central issues before the panel were whether: (a) the petitioner’s off-duty statements were discriminatory or derogatory to transgender people and whether she identified herself as a nurse or nurse educator in making them; (b) there was a sufficient nexus between the statements and the profession to bring them within the ambit of professional regulation; and (c) if so, whether a finding that the off-duty statements constituted unprofessional conduct would unjustifiably infringe the petitioner’s rights under s. 2(b) of the *Charter of Rights and Freedoms* [Charter].

[5] The Panel examined the petitioner’s statements and considered whether each statement was discriminatory or derogatory towards transgender people and

had a sufficient nexus to the profession. In doing so, it made findings, based on expert evidence, about sex, gender, and the experience of transgender people.

[6] The Panel found that some of the petitioners' statements had a reasonable nexus to the nursing profession because they "fundamentally [conflicted] with the core values of the health care system and the protection of the public": Decision at para. 224. The Panel accepted that the petitioner made the statements to advocate for the protection of sex-based rights for women (at para. 215), but found that her statements could not be reconciled with the core values of the healthcare system (at para. 219). The Panel applied the *Doré/Loyola* proportionate balancing framework and concluded that a finding that there was a sufficient nexus between the off-duty statements and the profession of nursing, such that they constituted unprofessional conduct, would not unjustifiably infringe the petitioner's freedom of expression under s. 2(b) of the *Charter*: Decision at para. 261.

[7] The petitioner advances the following grounds of appeal, as set out in para. 27 of the petition, namely that the Panel erred:

- a) by expanding the definition of "discriminatory" to include disagreement with gender ideology and in finding that her statements were discriminatory, derogatory, and constituted unprofessional conduct;
- b) by finding that the "tone" of the petitioner's statements invalidated her alleged good faith intentions and the social value of her speech;
- c) by finding a sufficient nexus between the impugned comments and the profession;
- d) in its proportionate balancing of *Charter* rights under the *Doré/Loyola* framework by, *inter alia*, balancing the petitioner's s. 2(b) rights against "non-existent statutory objectives", limiting the protection of s. 2(b) to political speech or affording less protection to non-political speech, favouring one marginalized group over another, and "demeaning women's rights and protections contrary to ss. 15(a) and 28 of the *Charter*";

- e) by accepting a “scientifically novel and unsettled opinion on the multidimensional nature of sex” from one of the respondent’s experts without explaining why that evidence was favoured over the petitioner’s expert’s evidence; and
- f) by holding the petitioner to the standard of a lawyer.

[8] Collectively, the proposed intervenors seek leave to intervene to address the first four of the petitioner’s grounds of appeal as summarized above.

[9] I also note the respondent’s submission that the term “gender-critical speech” was not used by the Panel, other than when quoting the petitioner, the petitioner’s expert, or foreign jurisprudence. The CPSBC also does not endorse or use that term. Likewise, to the extent I have used the term in these reasons, I do so only to reflect its use by the parties and proposed intervenors in their oral and written submissions.

Legal Principles

[10] The principles governing intervention applications are well-established and not in dispute. The Court has inherent jurisdiction to grant intervenor status in appropriate cases and to make orders relating to intervenors’ participation in a proceeding: *O’Neill v. British Columbia (Minister of Health)*, 2025 BCSC 601 at para. 8.

[11] There are three broad threshold considerations that apply to intervention applications (*Equustek Solutions Inc. v. Google Inc.*, 2014 BCCA 448 [*Equustek*] at paras. 10–11, *aff’d* 2017 SCC 34):

- a) the nature of the group seeking intervenor status;
- b) the directness of the group’s interest in the matter; and
- c) the suitability of the issues in the appeal to an intervention.

[12] To obtain intervenor status, the applicant must show either that it has a direct interest in the outcome of a proceeding or that it represents a public interest in a public law issue: *Equustek* at paras. 5–9. All of the applicants in the present case seek to intervene on a public interest basis. VLC’s notice of application framed its interest as direct, but in the course of oral submissions, counsel clarified that like the other applicants, it seeks intervenor status on a public interest basis.

[13] The well-settled legal criteria that apply to where intervenor status is sought on a public interest basis are (*O’Neill* at para. 13; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCCA 282 at para. 14):

- a) Does the proposed intervenor have a broad representative base?
- b) Does the case legitimately engage the proposed intervenor’s interests in the public law issue raised?
- c) Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?
- d) Does the proposed intervenor seek to expand the scope of the matter by raising issues not raised by the parties?

[14] The exercise before the Court on this application is aptly summarized in *O’Neill*:

[14] In deciding whether to grant public interest intervenor status, the Court is concerned with ensuring that important points of view are not overlooked: *Equustek* at para. 8. However, such interventions must be able to present a perspective that is not already before the Court without expanding the litigation by raising matters that are not already part of it: para. 9.

[15] Intervenors who purport to offer a special perspective 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: *Beaudoin v. British Columbia*, 2021 BCSC 226 at para. 12, *aff’d* 2022 BCCA 427, leave to appeal to SCC *ref’d*, 2023 CanLII 72130 (S.C.C.). The role of an intervenor is thus narrow, as the Court of Appeal noted in *Equustek*:

[9] The scope for such interventions is very limited. 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.

[16] There is thus a delicate balance to be struck between ensuring that a proposed intervenor adds a different perspective and avoiding the expansion of the focus of the litigation to the extent that the dispute is taken away from the parties: *O'Neill* at para. 15, citing *FortisBC Inc. v. Shaw Cablesystems Limited*, 2010 BCCA 606 at para. 6.

[17] Whether a party consents to or opposes a proposed intervention is not determinative. The decision to grant intervenor status is ultimately a discretionary one made in the exercise of the Court's authority to control its own process: *Equustek* at para. 11; *O'Neill* at paras. 10 and 16.

[18] The petitioner submits that intervenors also need to be balanced on each side of the appeal, arguing, for example, that if *Egale* is granted leave to intervene, then "it is critically important to balance its submissions with those of [VLC]": petitioner's written submissions at para. 36; see also paras. 16 and 22. The petitioner relies on *Baker v. Van Dolder's Home Team Inc.*, 2025 ONCA 578 and *B.M. v. Ontario*, 2026 ONCA 422, in support of her position. I have considered these authorities and I am not persuaded that they support counsel's submission.

[19] *Baker* dealt with two intervenors who sought to make overlapping submissions on the same side of the dispute. In those circumstances, the Court noted that "[m]ultiple interveners making overlapping submissions on only one side of a dispute can imperil the fairness of the hearing": para. 16. *Baker* says nothing about balancing intervenors on opposing sides of the dispute. Nor does *B.M.*; it simply notes that in determining whether to grant leave to intervene, the Court will consider, *inter alia*, "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”: para. 8.

[20] Simply stated, the petitioner’s submission that interventions ought to be “balanced” on both sides of a dispute has no purchase in British Columbia. The idea of balancing intervenors on opposing sides of a dispute was considered and rejected in *Neskonlith Indian Band v. Salmon Arm (City)*, 2012 BCCA 358 [*Neskonlith*]. In that case, the Union of British Columbia Municipalities (the “UBCM”) and the Gitxaala Nation each applied to intervene on opposite sides of the dispute. The UBCM’s intervention was unopposed and while the Court noted the temptation to grant intervenor status to the Gitxaala Nation to “balance” the interventions, it declined to do so, concluding that each intervention must be considered as if it were the only application before the Court:

[5] I consider the two intervenor applications to be entirely separate. It is tempting to say that intervenor participation by a representative group on one side of the issue in fairness should be balanced by some sort of representation on the other side. However, there are many cases in which there is intervention in the judicial process on only one side of an issue. It is my view that I must consider the Gitxaala application as though it were the only application before me.

[21] The Court refused leave to the Gitxaala Nation, concluding that it would not bring a different perspective than the appellant, reasoning as follows:

[9] ... Gitxaala is just another local band. Its people live on the northwest coast of the province hundreds of miles from Salmon Arm. It is not representative of First Nations bands province-wide. It is perhaps unfortunate that one of the First Nations representative bodies has not seen fit to seek intervenor participation in these proceedings, but I do not see that their absence makes it correct to give a single band intervenor status to compensate. Further, I am not persuaded that in its submissions today Gitxalaa has staked out any submission on the duty to consult issue that has not been advanced by Neskonlith as referenced by Mr. Justice Leask in his reasons, or that cannot be advanced by Neskonlith in its factum and in oral argument in the appeal.

[22] Following *Neskonlith*, I reject the petitioner’s submission that “balancing” interventions on both sides of a dispute is a relevant factor in the analysis. I have considered each of the five intervention applications before me on its own merit.

Discussion

[23] I address each of the proposed intervenors' applications below, in the order in which they made their submissions.

[24] I also note that I am satisfied that each of the CPSBC, West Coast LEAF, Egale, and ARPA satisfy the threshold criteria for the granting of intervenor status and have the required broad representative base.

The College of Physicians and Surgeons of British Columbia

[25] The CPSBC regulates the practice of medicine and podiatric medicine in British Columbia. There are over 17,000 licensees registered with the CPSBC including family physicians, specialist physicians, podiatric surgeons, and osteopaths. The CPSBC's regulatory role is similar to the respondent's. The respondent and the CPSBC were both governed by the *HPA*, and now the *Health Professions and Occupations Act*, S.B.C. 2022, c. 43 [*HPOA*], and share the same regulatory objectives of preventing the public from harm and protecting and promoting the public interest.

[26] The CPSBC seeks to make the following submissions on appeal:

- a) Non-discrimination is a core value across healthcare professions and an essential public interest to be protected;
- b) Assessing the nexus between a licensee's off-duty conduct and the profession is a highly contextual exercise;
- c) A licensee's constitutional rights under s. 2(b) of the *Charter* may be attenuated to fulfill regulatory objectives; and
- d) Protecting the public interest includes promoting professional and respectful public expression of licensees.

[27] The respondent does not oppose the CPSBC's application. The petitioner opposes it on two grounds: (a) that the CPSBC does not bring a unique perspective

as it is merely another regulator who would duplicate the respondent's submissions; and (b) that it would expand the scope of the issues if granted leave to address "core values" under the *HPOA*.

[28] The CPSBC says that despite sharing the same statutory mandate as the respondent, its perspective will nonetheless assist the Court because it will provide a broader perspective and the distinct view of its members. I agree. I am satisfied that the CPSBC's interests are legitimately engaged and that the CPSBC is well-positioned to offer a comparative perspective of how another regulator operating within the same regulatory context deals with the matters in issue.

[29] I am also satisfied that the CPSBC's perspective will be of assistance to the Court because it can bring a broader understanding of the role of non-discrimination and the importance of respectful public expression in the healthcare sector, and the contextual factors that healthcare regulators may consider when assessing the nexus between off-duty expression and professional obligations in cases where the impugned conduct conflicts with core values.

[30] I am not persuaded that allowing the CPSBC to address the guiding principles (or "core values" to use the nomenclature adopted by the parties in their submissions) of the healthcare profession will expand the scope of the appeal. While the core values of healthcare professionals are now made express in ss. 14 and 15 of the *HPOA*, it does not follow that the same or similar principles did not also underpin the *HPA*. Whether characterized expressly or not, the concept of the core values is put in issue on appeal by the petitioner's assertion that the Panel erred in balancing her s. 2(b) rights against "non-existent statutory objectives". Granting leave to the CPSBC to address the core values of healthcare professions would not, therefore, expand the issues on appeal.

[31] Accordingly, I grant the CPSBC leave to intervene to make the submissions set out in paras. 26(a), (b), and (d) above.

[32] I am not, however, satisfied that the CPSBC brings a different perspective than the respondent to the issue of whether a licensee's constitutional rights under s. 2(b) of the *Charter* can be attenuated to fulfill regulatory objectives under the *Doré/Loyola* proportionality analysis. Leave is thus refused in respect of the proposed submission set out in para. 26(c).

West Coast LEAF

[33] West Coast LEAF has extensive history and experience advocating for women's rights, which it asserts is inclusive of all women, and brings a unique perspective grounded in substantive gender equality for cis and transgender women. West Coast LEAF is also an experienced intervenor, having intervened in proceedings before all levels of BC Courts and the Supreme Court of Canada.

[34] It is undisputed that this proceeding raises public law issues that legitimately engage West Coast LEAF's interests, as demonstrated by its mandate and advocacy initiatives. West Coast LEAF has experience and expertise in issues involving both the substantive equality rights of cisgender women, transgender women, and other Two Spirit and transgender people; and the interpretation and application of ss. 15 and 28 of the *Charter*.

[35] If granted leave to intervene, West Coast LEAF proposes to make the following submissions:

- a) The proper approach to a *Doré/Loyola* proportionality analysis where *Charter* values are in issue must be robust and informed by the jurisprudence derived from *R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CanLII 46.
- b) Courts should exercise caution in adjudicating an alleged clash of *Charter* rights under ss. 15 and 28, when multiple groups may be rights holders under these sections and a mere allegation of a clash of rights does not require administrative decision-makers to adjudicate the alleged clash; and

- c) To the extent the Court engages with s. 28 of the *Charter*, a purposive approach should be employed, consistent with the living tree doctrine.

[36] Neither party opposes West Coast LEAF being granted leave to intervene on the second and third issues set out above. I am likewise satisfied that West Coast LEAF will bring a unique perspective to those issues which will be of assistance to the Court.

[37] The petitioner opposes leave being granted to West Coast LEAF on the first issue on the basis that it would expand the issues or would be duplicative of the respondent's position. In the petitioner's submission, West Coast LEAF seeks to "revisit and broaden the analysis to discuss the 'harm the expressive content may inflict on a vulnerable community'", which is a position she asserts was "already argued and adopted wholeheartedly by the Panel": petitioner's written submissions at para. 42. Thus, the petitioner submits that permitting West Coast LEAF to make submissions on this point would "only serve to bolster the position of [the respondent] and imperil the fairness of the hearing": petitioner's written submissions at para. 42. I am not persuaded that this is the case.

[38] While West Coast LEAF's perspective may overlap with the Panel's findings, that is not a basis to deny it leave to intervene. I am satisfied that with respect to the issue of the proper approach to the *Doré/Loyola* analysis, West Coast LEAF brings a unique perspective of intersectional feminism that is unlikely to be duplicated by the respondent and is broader than—and thus distinct from—that provided by Egale. I am also satisfied that West Coast LEAF's perspective will be of assistance to the Court when reviewing the proportionality analysis undertaken by the Panel.

[39] West Coast LEAF's intended submissions will not expand the scope of the issues as the *Doré/Loyola* proportionality analysis is already squarely in issue and thus the applicable jurisprudence—including that derived from *Oakes*—will need to be canvassed. I am satisfied that West Coast LEAF's analysis of how the *Oakes* jurisprudence informs the *Doré/Loyola* proportionality analysis when equality values are engaged will be of assistance to the Court.

[40] In the result, West Coast LEAF is granted leave to intervene on all three of its proposed grounds.

Egale Canada

[41] Egale is a well-established national nonprofit organization that represents the interests of two spirit, lesbian, gay, bisexual, transgender, queer, and intersex (“2SLGBTQI”) people in Canada. Egale is an experienced intervenor, having intervened in a multitude of cases before this Court, appellate courts, and the Supreme Court of Canada.

[42] Egale’s mission is to improve the lives of 2SLGBTQI people in Canada and to enhance the global response to 2SLGBTQI issues. It seeks to achieve its mission by informing public policy, inspiring cultural change, and promoting human rights and inclusion through research, education, awareness, and legal advocacy.

[43] Neither of the parties takes issue with Egale’s interest, mandate, or experience and I am similarly satisfied that its interests are legitimately engaged. The issue in respect of Egale’s application is whether it will bring a distinct and useful perspective to the proceeding, and whether its proposed grounds of intervention will expand the issues.

[44] Egale seeks to make the following three submissions on appeal:

- a) In assessing the conduct of a regulated health professional, it is necessary to consider the unique position of disadvantage, social stigma, and prejudice faced by transgender people;
- b) Denial of the existence and/or identity of transgender people—including by denying that gender dysphoria exists and by intentionally misgendering transgender people—is both “derogatory” and “discriminatory” in the context of professional regulation; and
- c) When conducting a *Doré/Loyola* proportionality analysis, any impact on the petitioner’s freedom of expression under s. 2(b) must be balanced

against the countervailing ss. 7 and 15 *Charter* interests of transgender people, which are engaged in the analysis.

[45] The petitioner says that Egale does not bring a unique perspective because its submissions overlap with and will duplicate the respondent's position. I disagree. I am satisfied that Egale has a unique and different perspective that will assist the Court.

[46] Egale is the only proposed intervenor who can offer the perspective of the transgender community in a proceeding where that community is central in that its members were the target of the speech in issue. In my view, a consideration of the type or nature of statements that are considered derogatory and discriminatory towards transgender people should include the perspective of an organization like Egale who represents the transgender community. This is not a perspective that the respondent can or will provide. Egale can assist the Court by speaking to the impact of discrimination on transgender people at a different and more general level than the respondent, whose focus is properly on the particular statements made by the petitioner.

[47] I am also satisfied that Egale's perspective is more specific and narrowly focussed than West Coast LEAF's is, and to the extent that there is potential for overlap, the Court's expectation is that the two intervenors will consult and cooperate to avoid duplication. Moreover, and contrary to the petitioner's submission, the potential for Egale's submissions to overlap with the conclusions reached by the Panel is not a basis to deny intervention.

[48] That said, I am not persuaded that Egale ought to be granted leave to intervene on all three of its proposed grounds. I agree with the petitioner that Egale's third proposed submission would expand the scope of the issues. In this respect, Egale seeks to submit that transgender people's right to access lawful healthcare as protected by s. 7 of the *Charter* must be considered when conducting the *Doré/Loyola* proportionality analysis (Egale's written submissions at para. 22(c); see also para. 43):

When conducting a *Doré* proportionality analysis, any impact on the Petitioner's freedom of expression under s. 2(b) must be balanced against the countervailing ss. 7 and 15 *Charter* interests of trans people, which are also engaged by the regulator's decision. Trans patients have "a right to equitable access to lawful and provincially funded health care services" which engages s. 7 of the *Charter* in the *Doré* analysis. ...

[Emphasis added.]

[49] Egale says that this submission does not expand the scope of the proceeding because it does not introduce a free-standing s. 7 *Charter* claim. Rather, Egale submits that it simply intends to provide the Court with the necessary tools to perform the *Doré/Loyola* analysis that it is already required to undertake. I am not persuaded that this is the case.

[50] An intervenor is prohibited from raising entirely new issues, including making submissions on *Charter* grounds not raised by the parties: *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2011 BCSC 1270 at para. 83, aff'd 2013 BCCA 147, rev'd in part on other grounds, 2015 SCC 7. The Panel did not consider s. 7 of the *Charter* in its *Doré/Loyola* analysis and the parties do not assert that the Panel erred in that regard. Protection of transgender people's rights under s. 7 of the *Charter* was not in issue before the Panel. In these circumstances, it is difficult to see how Egale's proposed submission regarding s. 7 is anything other than an attempt to raise a new issue or expand the scope of the appeal.

[51] I acknowledge that Egale was granted leave to intervene and make submissions about s. 7 where that section was not directly in issue in *Christian Heritage Party of Canada v. Hamilton (City)*, 2025 ONCA 700 [*Christian Heritage*]. Though persuasive as an appellate decision from another province, *Christian Heritage* is not binding on this Court. Each intervention application must be decided on its own facts within the context of the decision under appeal and the issues in dispute between the parties. Regardless, the decision to grant leave in *Christian Heritage* appears to have been provisional in nature as the Court noted that it was not 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” (emphasis added). It expressly left open the possibility that the panel hearing the appeal may decide not to consider that argument: para. 18.

[52] Finally, it is important to maintain focus on the nature of this proceeding and the task before the Court. This is not a freestanding constitutional challenge; it is a statutory appeal of a regulatory decision in which the disciplinary panel was required to conduct a *Doré/Loyola* analysis balancing the petitioner’s s. 2(b) rights against equality rights under ss. 15 and 28 of the *Charter*. The right as framed by *Egale*—transgender people’s right to access healthcare under s. 7 of the *Charter*—is not in issue on this appeal.

[53] Accordingly, *Egale* is granted leave to intervene on the grounds set out in paras. 44(a) and (b), but not (c).

Association for Reformed Political Action

[54] ARPA is a Reformed Christian political advocacy organization. Its mission is twofold: (a) to educate, equip, and assist Reformed Christians in engaging faithfully and effectively in public life; and (b) to present a Reformed Christian perspective grounded in biblical authority on legal and public policy issues to Canadian civil authorities, including the courts.

[55] ARPA’s perspective is rooted in the Reformed Christian tradition, which affirms that all people, including people who identify as transgender, are made in the image of God and are entitled to dignity and respect. Reformed Christian doctrine maintains that one’s biological sex is decisive in identifying whether a person is a man or a woman. ARPA seeks to advocate for what it’s conception of the “truth about sex and gender”, which it frames as an essential element of sound public policy and human flourishing. With respect to this proceeding, ARPA submits that it is “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”: ARPA’s notice of application at para. 4(c).

[56] ARPA does not, however, seek to make submissions which engage s. 2(a) of the *Charter*. Rather, if granted leave to intervene, ARPA seeks to focus on s. 2(b) and submit that gender-critical speech:

- a) is valuable expression that criticizes gender identity theory;
- b) does not promote discrimination or hatred and is not incompatible with legal protections for transgender people;
- c) is important philosophical and political expression that supports the underlying purposes of freedom of expression; and
- d) involves philosophical concepts and ideas that fall outside the competence of administrative decision-makers, and thus, administrative decision-makers ought to avoid becoming arbiters of truth in such philosophical debates.

[57] ARPA submits that even though freedom of religion is not in issue in this proceeding, it nonetheless brings a unique perspective to the issues that will assist the Court and notes that religious intervenors have been granted leave in non-religious cases, citing. *A.B. v. C.D.*, 2019 BCCA 297 and *R. v. Kloubakov*, 2025 SCC 25.

[58] The petitioner is supportive of ARPA's application. While she does not take the position that gender-critical speech is counter-speech, she asserts that ARPA's ethical perspective on the issue of truth and philosophical debate will be of assistance to the Court and differs from her own perspective because ARPA's perspective is grounded in religion. The respondent submits that although ARPA has a broad representative base, it does not meet any of the other criteria for a grant of public intervenor status.

[59] In my view, ARPA's interests are legitimately engaged in terms of its commitment to advocating for Reformed Christian professionals and their ability to participate in public discourse without fear of professional sanction. I am also

satisfied that ARPA’s religion-based perspective on its second proposed ground of intervention—that gender-critical speech does not promote discrimination or hatred and is not incompatible with legal protections for transgender people—will be of assistance to the Court.

[60] ARPA is thus granted leave to intervene on the issue as set out in para. 56(b) above. That said, ARPA’s submissions suggest that its perspective on this issue may be duplicative of the petitioner’s, particularly to the extent that it seeks to address the statutory framework and jurisprudence in the United Kingdom. Those issues were raised by the petitioner before, and addressed by, the Panel. ARPA is not permitted to duplicate the petitioner’s submissions in this regard.

[61] The balance of ARPA’s proposed submissions are duplicative of the petitioner’s, would improperly expand the issues, and have the potential to take the litigation away from the parties. Though not framed in precisely the same way, ARPA’s first proposed ground of intervention essentially duplicates the petitioner’s position, and I am not satisfied that ARPA brings a unique perspective in this respect. Moreover, ARPA’s submissions suggest that it may seek to introduce evidence about gender-critical speech in government and academia in support of this position, which would stray beyond the proper role of an intervenor.

[62] ARPA’s proposed submissions based on “philosophical speech” raise new issues that would expand the scope of the proceeding. The petitioner does not describe her speech as philosophical, nor did the Panel make any findings in that respect. ARPA’s proposed submissions thus seek to recharacterize the statements and redefine the issues on appeal. ARPA’s attempt to characterize the petitioner’s statements as philosophical speech so that it can then “advocate for truth about sex and gender” as “an essential element of sound public policy and human flourishing”, also clearly seeks to expand the issues and thus strays far beyond the narrow lane to be occupied by an intervenor.

[63] The same issue arises with ARPA’s proposed submission that the petitioner’s speech was political in nature. The Panel concluded that her statements were not

political speech. The petitioner does not characterize her statements as political and, rather, asserts that the Panel erred in failing to consider protections for *non*-political speech. ARPA is thus seeking to take a different—and indeed opposite—position than the petitioner. Granting ARPA leave to intervene on this basis would be tantamount to allowing ARPA to raise a new ground of appeal by seeking to overturn a finding of the Panel that is not otherwise under review.

[64] Finally, ARPA’s fourth proposed ground of intervention—that “administrative decision makers must not purport to resolve contested philosophical questions that fall outside their competence”—attempts to inject a broad jurisdictional issue into this proceeding that does not arise on the pleadings. ARPA says that the Panel exceeded its proper role by acting as the “arbiter of truth”, giving itself the right to determine what constitutes human identity and, in doing so, made a philosophical conclusion that falls outside its competence. This is an entirely new issue untethered to the issues on appeal. Permitting ARPA to advance this argument would stray far beyond the proper confines of public interest intervention by impermissibly expanding the matters in issue on appeal well beyond those framed by the parties.

[65] ARPA is therefore granted leave to intervene on its second proposed ground, as set out in para. 56(b) above, but must not duplicate the petitioner’s position or submissions in doing so. Leave to intervene on the remaining three proposed grounds is dismissed.

Vancouver Lesbian Collective

[66] VLC is a Vancouver-based voluntary association of lesbians that was founded in 2015. VLC was formed to create a social and political space that recognizes the significance of biological sex to lesbians and offers lesbians a sex and sexuality-specific alternative to other 2SLGBTQI organizations in Vancouver. VLC believes that lesbians benefit from being able to form lesbian-only associations for the purpose of socializing, campaigning, and forming relationships.

[67] VLC’s representative describes its work as advocating for the rights of lesbians; defending their political, bodily, and sexual boundaries; and pursuing

women's liberation from patriarchy. VLC defines "lesbian" as someone who is biologically female and same-sex attracted, which definition it sees as "fundamental to lesbian identity, sexuality and experience". VLC's conception of lesbianism does not include transgender women.

[68] VLC is concerned that "the Panel's conclusions undermine hard-fought accommodations that promote substantive equality for women and lesbians" and that the Decision will "chill its ability to even *advocate* in favour of equality rights for women and lesbians" (emphasis in original). VLC thus seeks to intervene to address the importance of sex-based substantive equality rights engaged by s. 15 of the *Charter*, and the impact of the Decision on VLC's and its members' ability to advocate for sex-based rights for women and lesbians without fear of sanction from their employers or professional regulators.

[69] VLC submits that the Panel "made broad findings as to what speech constitutes discriminatory and derogatory treatment of transgender people" which "cover all of VLC's activities and advocacy": VLC's written submissions at paras. 13 and 33. VLC submits that its members hold many of the same views that the petitioner was sanctioned for and fear reprisal from their own employers and regulatory bodies. In VLC's submission, the Panel's findings about what constitutes discriminatory statements in respect of transgender people "puts a chill" on VLC's ability to advocate in favour of its mandate.

[70] In my view, these submissions reflect a fundamental misunderstanding of the regulatory context within which the respondent operates, the limited ambit of the Decision, and the nature of this statutory appeal.

[71] The petitioner supports VLC's application to intervene. She submits that VLC will provide a valuable perspective and echoes VLC's submissions that the United Kingdom jurisprudence that both she and VLC wish to raise demonstrates the impact of gender-critical speech on VLC's interests. The respondent says that VLC does not meet the test to be granted intervenor status as it has not established that it has a broad representative base or that its views are representative of its base.

[72] Some clarity in terms of VLC's position is required to frame the analysis that follows. VLC's notice of application was unclear as to the basis—direct or public interest—for its proposed intervention and the submissions made therein suggested that it was advancing a direct interest. However, VLC clarified in its oral submissions that it was seeking leave to intervene on public interest grounds and I have thus considered VLC's application on that basis.

[73] VLC is a first-time applicant for intervenor status. Unlike West Coast LEAF, Egale, and ARPA, it does not have a demonstrated history of advocacy as an intervenor before the courts. VLC correctly notes that prior experience as an intervenor is not required to be granted intervenor status. However, in my view, where a proposed intervenor is inexperienced and unfamiliar to the Court, careful consideration must be given to both the threshold requirements and whether the test for public interest intervenor status is met.

[74] There is little in the record establishing the nature of VLC or the breadth of its representative base. I accept counsel's assertion that VLC is a registered society. However, there is little else from which to assess VLC's nature as an organization. VLC has not provided evidence of its constituting documents, mandate, or bylaws, if any.

[75] VLC maintains a website and an X account, but its main activities appear to consist of hosting events and engaging in campaigns. VLC's affiant testified that the association organized and spoke at two public events that were attended by approximately 200 people and that it has engaged in "public information and education campaigns, such as one publicizing the harmful effects of puberty and cross-sex hormones on young women and lesbians". It is not clear when these events occurred or whether VLC's activities or campaigns are ongoing.

[76] The respondent notes that VLC does not appear to have advocated for or lobbied the government in respect of its views, engaged with international bodies, conducted research, or otherwise made significant public contributions. VLC is correct that participation in such activities is not a prerequisite to be granted

intervenor status, but in the absence of an established record of intervention, evidence of engagement at such levels would be of assistance to the Court in evaluating the nature of VLC as an organization.

[77] This is particularly the case where the record contains little evidence from which to elucidate the size or scope of VLC's membership or the breadth of its representative base. VLC says that it is a Vancouver-based organization, yet its affiant resides in Kelowna, and it retained counsel from Ontario. VLC's evidence about its membership is that it is a voluntary association of lesbians and that:

[Its] members include lesbians from a range of backgrounds and occupations, including those who have been subject to employer attempts to curtail either their external advocacy on behalf of women and lesbians or their employment activities because they engaged in external advocacy on behalf of women including lesbians.

[78] In the circumstances, I am not satisfied that VLC has established that it has a sufficiently broad representative base or that its proposed submissions are reflective of that base to act as a public interest intervenor in this proceeding.

[79] Regardless, I am not, in any event, persuaded that it otherwise meets the test for public intervenor status. I come to this conclusion for the following reasons.

[80] First, VLC's proposed submissions are largely and substantively duplicative of the petitioner's position. VLC's members share the same views as the petitioner and the bulk of the issues it seeks to engage with as an intervenor are already addressed by the petitioner. By way of example, VLC's proposed submission that the Panel's conclusions are at odds with the prevailing law in other jurisdictions is the same submission, relying on the same statute and jurisprudence from the United Kingdom that the petitioner made before the Panel. I am thus not persuaded that it brings a different perspective that will be of assistance to the Court.

[81] Second, the tenor of VLC's submissions suggests that what it is effectively seeking to do is not to provide a unique perspective on the issues raised by the parties, but rather to challenge the Panel's findings directly because it perceives that

the Decision puts “VLC and its members at risk of professional and employment sanctions for advocating for its very purpose and mandate”: VLC’s written submissions at para. 33. Granting leave to VLC to intervene on this ground would not only expand the scope of this proceeding, but also highlights VLC’s misunderstanding of both the nature of the underlying statutory appeal and the proper role of an intervenor.

[82] Likewise, VLC’s proposed submission that for the purpose of s. 15 of the *Charter*, “sex” must be defined as “a biologically based right that includes certain immutable and common characteristics” demonstrates a lack of appreciation of the matters in issue and the task of this Court on the underlying statutory appeal: VLC’s written submissions at para. 31.

[83] In summary, VLC’s position on this application demonstrates a lack of understanding of the proper role of an intervenor and I am not persuaded that its participation will be of assistance to the Court. VLC’s application for leave to intervene is dismissed.

Conclusion

[84] In the result, the CPSBC, West Coast LEAF, Egale, and ARPA are granted leave to intervene on the grounds set out above. VLC’s application for leave to intervene is dismissed.

[85] I am of the view that a uniform ten-page limit for each intervenor is reasonable and appropriate and will permit the intervenors to fairly and succinctly set out their positions. To avoid duplication, the CPSBC is to coordinate its submissions with the respondent, Egale is to coordinate its submissions with West Coast LEAF, and ARPA is to coordinate its submissions with the petitioner—all with the view of avoiding duplication. Each of the intervenors is also granted oral submissions of 15 minutes.

[86] The CPSBC, West Coast LEAF, Egale, and APRA’s applications for leave to intervene on the permitted grounds are thus granted on the following terms:

- a) Each intervenor may submit written submissions not exceeding ten pages in length;
- b) Each intervenor may have up to 15 minutes to make oral submissions at the hearing of the petition on the merits;
- c) No intervenor shall adduce evidence or otherwise supplement the record; and
- d) The style of cause shall be amended to include the intervenors.

[87] None of the proposed intervenors sought costs and, consistent with the usual practice in this Court, no costs are awarded in respect of this application for or against any of the intervenors, the parties, or the applicant VLC.

“Hughes J.”