

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:



THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA  
and PATRICIA MALONEY

Applicants

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondent

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on to be determined, at 10:00 a.m., at 161 Elgin Street, Ottawa, Ontario K2P 2K1.

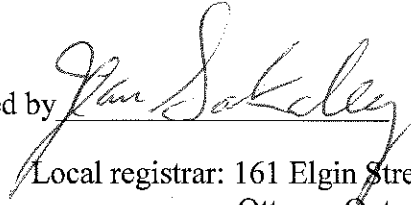
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 21, 2015

Issued by



Local registrar: 161 Elgin Street  
Ottawa, Ontario K2P 2K1

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
Crown Law Office, Civil Law  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, Ontario M5G 2K1

## **THE APPLICATION IS FOR:**

1. The Applicants, the Association for Reformed Political Action (ARPA) Canada (“ARPA Canada”) and Patricia Maloney make application for an Order pursuant to the Canadian *Charter of Rights and Freedoms*:
  - a. Declaring that section 65(5.7) of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter F.31 (the “*FIPPA*”) violates s. 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11. (the “*Charter*”), which violation is not justified under s. 1 of the *Charter*;
  - b. Striking section 65(5.7) of the *FIPPA* for its breach of s. 2(b) of the *Charter*;
  - c. Their costs of this Application on a substantial indemnity basis; and,
  - d. Such further and other costs as this Honourable Court deems just.
2. The grounds for the application are:

### **The Applicants**

#### **The Association for Reformed Political Action Canada**

- a. ARPA Canada is a not-for-profit and non-partisan organization devoted to educating, equipping, and assisting members of Canada’s Reformed churches and the broader community as they seek to participate in the public square.
- b. Since its incorporation in 2007, ARPA Canada has become the primary means through which many Reformed Christians engage in social and political engagement in their communities, provinces, and this nation. ARPA Canada coordinates approximately 20 local ARPA chapters across Canada. They are made up of volunteers from a variety of age-groups, socio-economic, denominational and political backgrounds.
- c. ARPA Canada also operates and manages the “WeNeedALaw” campaign, which seeks to educate and mobilize Canadians regarding Canada’s lack of legislation and protection for pre-born children. WeNeedALaw campaigns for legal protection for pre-born children.

### Patricia Maloney

- d. Patricia Maloney is an individual, residing in the City of Ottawa, in the Province of Ontario, who administers and authors the blog “Run with Life” which acts as a platform for the discussion of abortion and other related political issues. Ms. Maloney has been operating “Run with Life” since March 31, 2010 and has, since that time, limited her writing to issues dealing with the sanctity of life. As such, “Run with Life” focuses on abortion-related issues, including coverage and commentary of current events and issues of public or political interest as they relate to the abortion debate and discussion.
- e. For some time, Ms. Maloney has focussed a part of her writing on the cost of abortions in Ontario. She has, and continues to try and obtain information on the cost of abortions in Ontario as paid for by the Ontario Health Insurance Plan, and therefore, the taxpayer.
- f. “Run with Life” has become quite popular, attracting over 2,000 visitors per month.
- g. Since beginning “Run with Life”, Ms. Maloney has regularly made Freedom of Information Requests (“FOI Requests”) to the Ontario Ministry of Health and Long-Term Care (“MOH”) to obtain information regarding the number of abortions performed in particular time periods and the amount of taxpayer dollars used to fund abortions during particular time periods.

### Section 65(5.7) of the FIPPA

- h. In or about 2010, the Government of Ontario introduced Bill 122, *Broader Public Sector Accountability Act, 2010* (“Bill 122”) which added section 65(5.7) to the *FIPPA*.
- i. The stated purposes of Bill 122 were to ensure transparency and accountability of hospitals by making them subject to the *FIPPA* while excluding and protecting personal health information.
- j. The addition of section 65(5.7) to the *FIPPA* was never discussed during debate of Bill 122.

- k. In December 2010, Bill 122 received Royal Assent and came into force on January 1, 2012.

The violation of ARPA Canada's and Ms. Maloney's freedom of expression

- l. ARPA Canada, as an organization dedicated to encouraging Reformed Christians and the broader public to participate in social and political debate and issues, including the issue of abortion, is precluded from participating in the democratic process.
- m. Ms. Maloney, as a blogger who writes about abortion-related issues, including the use of taxpayer dollars to fund abortions, is precluded from exercising her *Charter* right to freedom of expression because of the *FIPPA*'s section 65(5.7) which excludes public information regarding a highly controversial and sensitive procedure.
- n. The information excluded by section 65(5.7) of the *FIPPA* is necessary to providing informed commentary and/or education on a political issue of public importance.
- o. The information excluded by section 65(5.7) of the *FIPPA* includes the number of abortions which occur in any given time period, the types of abortion which occur in any given time period and the amount of taxpayer dollars used to fund abortions during any given time period. Section 65(5.7) of the *FIPPA* also excludes information on any complications related to abortion, or gestational age, or demographic information for the women who have abortions, or number of repeat abortions, among other information.
- p. The information excluded from the *FIPPA* by section 65(5.7) is not personal information worthy of protection under the *FIPPA* and is necessary to the exercise of ARPA Canada's and Ms. Maloney's s. 2(b) *Charter* right to freedom of expression and to their full participation in the democratic process.
- q. Section 65(5.7) of the *FIPPA* violates the Applicants' section 2(b) *Charter* right to freedom of expression.
- r. Section 65(5.7) of the *FIPPA* violates the Applicants' section 2(b) *Charter* right to freedom of the press.

- s. Section 65(5.7) of the *FIPPA* violates the principle of open government.

Ms. Maloney's attempt at obtaining information

- t. In March 2012, Ms. Maloney made an FOI Request for two, two-page charts titled "Medical Management of Non-Viable Fetus or Intra-Uterine Fetal Demise between 14 and 20 Weeks Gestation Volume by Diagnostic Code and by Service Location, Fiscal Year 2009" and "Medical Management of Non-Viable Fetus or Intra-Uterine Fetal Demise between 14 and 20 Weeks Gestation Volume by Diagnostic Code and by Service Location, Fiscal Year 2010" (the "Requested Charts").
- u. The MOH Refused Ms. Maloney's FOI Request relying on the newly enacted section 65(5.7) of the *FIPPA* which seeks to exclude documents relating to the provision of abortion services from the *FIPPA*. Section 65(5.7) of the *FIPPA* reads:

65(5.7) This Act does not apply to records relating to the provision of abortion services.
- v. Ms. Maloney appealed the MOH's decision to the Information and Privacy Commissioner of Ontario ("IPC"). Her Majesty the Queen in Right of Ontario ("Ontario") opposed Ms. Maloney's appeal and the IPC upheld the MOH's decision.
- w. Ms. Maloney sought a review of the IPC's decision, which Ontario again opposed. In the review process, the IPC's decision was upheld.
- x. Ms. Maloney filed an Application for Judicial Review of the IPC's decision, which Ontario vigorously opposed.
- y. After approximately two and a half years of opposing Ms. Maloney's request, and in the face of her factum on her Application for Judicial Review of the IPC's decision, Ontario disclosed the Requested Charts outside of the *FIPPA*.
- z. Further, or in the alternative, ARPA Canada has public interest standing to assert an infringement of sections 2(b) the *Charter*:

- i. There is a serious justiciable issue raised by section 65(5.7) of the *FIPPA* in that the question raised is an important and substantial constitutional and quasi-constitutional issue;
  - ii. ARPA Canada has a real stake and genuine interest in the issue in that they have a real and continuing interest in engaging their members and constituents in social and political issues and in educating the public and advocating for the protection of the pre-born through its WeNeedALaw campaign; and,
  - iii. This application is a reasonable and effective means of bringing the matter before the Court.
- aa. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.
  - bb. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.
  - cc. Rules 14.05(2) and 38 of the *Rules of Civil Procedure*.
3. The following documentary evidence will be used at the hearing of the application:
    - a. The affidavits of the Applicants, to be sworn, and the exhibits thereto; and,
    - b. Such further and other material as counsel may submit and this Honourable Court permit.

**DATED** at Ottawa, Ontario, this 21<sup>st</sup> day of April 2015.

**VINCENT DAGENAIS GIBSON LLP/s.r.l.**  
260 Dalhousie Street, Suite 400  
Ottawa, Ontario K1N 7E4

**ALBERTOS POLIZOGOPOULOS**  
Tel : (613) 241-2701  
Fax : (613) 241-2599  
Solicitors for the Applicants

**THE ASSOCIATION FOR REFORMED POLITICAL  
ACTION (ARPA) CANADA et al.**

and

**HER MAJESTY THE QUEEN  
IN RIGHT OF ONTARIO**

Applicants

Respondent

Court File No. 15-

*64024*

**SUPERIOR COURT OF JUSTICE**  
Proceedings commenced at Ottawa

**NOTICE OF APPLICATION**

**VINCENT DAGENAIS GIBSON LLP/s.r.l.**  
260 Dalhousie Street, Suite 400  
Ottawa, Ontario K1N 7E4

**ALBERTOS POLIZOGOPOULOS**  
Solicitor for the Applicants

(613) 241-2701 (Tel.)

(613) 241-2599 (Fax)

[albertos@vdbg.ca](mailto:albertos@vdbg.ca)