

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE ONTARIO COURT OF APPEAL)

**BETWEEN:**

**CITY OF TORONTO**

**APPELLANT**  
(Respondent)

- and -

**ATTORNEY GENERAL OF ONTARIO**

**RESPONDENT**  
(Appellant)

- and -

**TORONTO DISTRICT SCHOOL BOARD**

**INTERVENER**  
(Intervener)

- and -

**ATTORNEY GENERAL OF BRITISH COLUMBIA,  
ATTORNEY GENERAL OF CANADA**

**INTERVENERS**

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**REPLY TO RESPONSE TO MOTION FOR INTERVENTION  
OF THE DURHAM COMMUNITY LEGAL CLINIC**  
Pursuant to Rule 50 of the *Rules of the Supreme Court of Canada*

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1. We are writing in reply to the submissions of the respondent, Ontario, opposing the motion for leave to intervene of the Durham Community Legal Clinic (DCLC). As with other proposed interveners, Ontario has grossly oversimplified the DCLC's role in law reform, and DCLC's position in arguing they duplicate the Appellant City of Toronto's position, or are otherwise immaterial.

2. Community Legal Clinics (CLCs) across Ontario routinely apply as interveners to the Supreme Court of Canada.<sup>1</sup> In some instances, these applicants have been successful, even when the legislative regime and the parties in question originate out of the catchment of services the clinic provides, or in some cases, are outside of Ontario entirely.<sup>2</sup> This is because (CLCs) are specifically

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<sup>1</sup> See, for example, *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2018 SCC 31 \(CanLII\)](#), [\[2018\] 2 SCR 230](#). In some instances, CLCs even act on behalf of a party before the Court, even where the party may not be part of their geographic catchment; *R. v. Shea*, [2010 SCC 26 \(CanLII\)](#), [\[2010\] 2 SCR 17](#); *Canada (Attorney General) v. Mavi*, [2011 SCC 30 \(CanLII\)](#), [\[2011\] 2 SCR 504](#); *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006 SCC 14 \(CanLII\)](#), [\[2006\] 1 SCR 513](#), or as counsel on behalf of an intervener; *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004 SCC 78 \(CanLII\)](#), [\[2004\] 3 SCR 657](#).

<sup>2</sup> See, for example, *Northern Regional Health Authority v. Linda Horrocks*, [2020 CanLII 15306 \(SCC\)](#), a leave originating out of Manitoba ([2017 MBCA 98 \(CanLII\)](#)), relating to a Manitoban legislative scheme, where Don Valley Community Legal Services, a Community Legal Clinic located in Toronto, Ontario, has been provided intervener status in a case currently before the Court. Specialty clinics in Ontario also play similar roles before the Court, for matters arising outside of Ontario; *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, [2016 SCC 25 \(CanLII\)](#), [\[2016\] 1 SCR 587](#), where Industrial Accident Victims Group Ontario (IAVGO) acted as interveners in a worker's compensation scheme originating in B.C., or *Quebec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, [2018 SCC 3 \(CanLII\)](#), [\[2018\] 1 SCR 35](#), where IAVGO acted as intervener in a matter originating in Quebec. In *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2018 SCC 31 \(CanLII\)](#), [\[2018\] 2 SCR 230](#), numerous CLCs and specialty clinics were jointly represented as interveners.

funded for law reform and advocacy work that is separate and distinct from the direct legal services it provides to any geographic community. Unlike the specialty clinics funded by Legal Aid Ontario (LAO), CLCs have the independence and the autonomy to engage in law reform on issues of a broader scope and general interest, and are limited instead by resource constraints and prioritization of issues through independent governance. This function has been scrutinized by the legislature and affirmed in the revised legislative scheme governing clinics, which comes into effect on April 1, 2021.<sup>3</sup>

3. It is specifically because DCLC sits outside of the geographic confines of the City of Toronto that it has greater autonomy and ability to make submissions in this matter, as CLCs within those boundaries typically have a direct linkage and relationship with municipal governments that may overlap or influence the positions they take on this matter before the Court. DCLC also possess distinct experience and expertise from other CLCs in Ontario in constitutional law, specifically as it relates to the power exercises by the provincial government. DCLC regularly makes legal submissions to the Ontario legislature, and is one of the most active CLCs in Ontario in this respect. DCLC's interest in this appeal is inherent to its role in law reform activities, and its independent advocacy role as created and affirmed by the same legislature that is a party to these proceedings. Legislative consistency and coherency require an interpretation of CLCs involvement in these ways in a manner that concludes that DCLC has an interest in the appeal.

4. Ontario has also grossly oversimplified the DCLC's position in these proceedings. The submissions that DCLC proposes to make concerning political participation and expression cannot be made by a municipality, which may purport to make submissions on behalf of low-income and historically marginalized populations, but is itself a political entity that reflects inherent power dynamics and social enfranchisement that are the result of the respondent's conduct. In contrast, DCLC is a community-based organization with independent funding from LAO, provided specifically to ensure the autonomy and independence of the clinic, and the ability to take positions without political influence or interference. This voice of political involvement and s. 2(b) freedom of expression rights are therefore markedly different in this context, as opposed to arguments that may otherwise appear similar as advanced by a political entity itself, and its presence may indeed

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<sup>3</sup> *Legal Aid Services Act*, 2020, SO 2020, c 11, Sch 15, [s. 5\(1\), \(5\)](#).

assist the Court. While the values behind s. 2(b) have been extensively examined by the Court,<sup>4</sup> the context of these same expression rights for low-income and historically marginalized populations has not been.<sup>5</sup>

5. Furthermore, DCLC intends to make submissions specifically as they relate to the political engagement and expression rights and interests of low-income and historically marginalized populations in school board elections. Although this is the main submission of another intervener, the Toronto District School Board (TDSB), DCLC's intended submissions are unique and different from TDSB given its particular focus. These intended submissions will be useful to the Court, as they employ paradigms such as critical race theory, feminist analysis, perspectives on disability, and other views of historically marginalized populations. Although the Court has recently demonstrated an increased openness to such perspectives,<sup>6</sup> much of the historic jurisprudence has failed to properly consider these views.<sup>7</sup> Purporting, as respondent does, that these perspectives which are routinely overlooked and disregarded in the political process would necessarily be covered by the existing parties and interveners is to perpetuate the same approach and assumptions that the respondent has taken to their exercise of legislative power in this instance,<sup>8</sup> and effectively presupposes the outcome of this matter.

6. In sum, DCLC has an interest in the appeal, the submissions by DCLC are distinct and

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<sup>4</sup> *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#), [\[1989\] 1 SCR 927](#) at 276; *R. v. Keegstra*, [1990 CanLII 24 \(SCC\)](#), [\[1990\] 3 SCR 697](#); *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990 CanLII 121 \(SCC\)](#), [\[1990\] 2 SCR 232](#); *Canada (human Rights Commission) v. Taylor*, [1990 CanLII 26 \(SCC\)](#), [\[1990\] 3 SCR 892](#); *Haig v. Canada; Haig v. Canada (Chief Electoral Officer)*, [1993 CanLII 58 \(SCC\)](#), [\[1993\] 2 SCR 995](#); *Saskatchewan (Human Rights Commission) v. Whatcott*, [2013 SCC 11 \(CanLII\)](#), [\[2013\] 1 SCR 467](#) at paras 102-106.

<sup>5</sup> *Ontario Public Service Employees Union v. National Citizens' Coalition Inc. (C.A.)*, [1990 CanLII 6959 \(ON CA\)](#).

<sup>6</sup> See, for example, *R. v. Le*, [2019 SCC 34 \(CanLII\)](#); *Fraser v. Canada (Attorney General)*, [2020 SCC 28 \(CanLII\)](#) at para 116.

<sup>7</sup> See, for example, Alyssa Clutterbuck, "[Rethinking Baker: A Critical Race Feminist Theory of Disability](#)," *Appeal: Review of Current Law and Law Reform*, Vol 20 (2015).

<sup>8</sup> *R. v. Big M Drug Mart Ltd.*, [1985 CanLII 69 \(SCC\)](#), [\[1985\] 1 SCR 295](#) at para 96; *Trinity Western University v. British Columbia College of Teachers*, [2001 SCC 31 \(CanLII\)](#), [\[2001\] 1 SCR 772](#) at para 28; *Mouvement laïque québécois v. Saguenay (City)*, [2015 SCC 16 \(CanLII\)](#), [\[2015\] 2 SCR 3](#) at para 68; *Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12 \(CanLII\)](#), [\[2015\] 1 SCR 613](#) at para 58; *Law Society of British Columbia v. Trinity Western University*, [2018 SCC 32 \(CanLII\)](#), [\[2018\] 2 SCR 293](#) at para 256.

useful, and the application to intervene should accordingly be granted.

Dated at: 7<sup>th</sup> of December 2020, at the City of Toronto, Ontario, Canada

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