

**ONTARIO SUPERIOR COURT OF JUSTICE
(Ottawa)**

B E T W E E N:

CAMPAIGN LIFE COALITION and MAEVE ROCHE

Applicants
- and -

PARLIAMENTARY PROTECTIVE SERVICE

Respondent

APPLICATION UNDER section 11 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and rules 14.05(3) (g.1) and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

RESPONDENT'S FACTUM

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PART I – OVERVIEW

1. The Applicants seek a constitutional declaration of invalidity that would allow them to show graphic abortion imagery on Parliament Hill without restriction. The graphic abortion imagery is intended to shock, disturb, and disgust passersby. Passersby on Parliament Hill are diverse. Families picnicking. Foreign dignitaries attending meetings. Women who have experienced pregnancy loss. School children visiting on a field trip.
2. On May 10, 2023, the day prior to their scheduled annual march, the Applicants held a press conference on Parliament Hill where they attempted to hold up these large posters:¹



POSTER 1

POSTER 2

POSTER 3

3. The URL on the posters encouraged passersby to visit the website, whyhumanrights.ca. The website instructs that abortion “kills humans”, is a “human rights violation”, and is “intentionally killing the child”. Intentional killing is murder.

¹ Application Record, Tab 4, Affidavit of Matthew Wojciechowski – Exhibit A, pp. 27-29.

4. Citing the General Rules on the Use of Parliament Hill (the Rules), Cst. Trudel and Cpl. Angeli of the Parliamentary Protective Service (PPS), informed the Applicants they could not show this type of imagery on the Hill. The 2023 Rules prohibit signage that depicts “obscene messages or messages that promote hatred” and “signs or banners that display explicit graphic violence or blood”.

5. The Applicants’ constitutional challenge to these Rules must fail. Although the Rules infringe the Applicants’ s. 2(b) *Charter* rights to unrestricted free speech, the Rules are a reasonable and tailored limit on the right to free speech under s. 1 of the *Charter*. The posters and associated website expose an unsuspecting public to graphic imagery and messaging that is misleading, gory, and may have damaging psychological effects on women and children. The Applicants’ misleading and discriminatory speech cannot be protected in the same way as speech that furthers the goals of s. 2(b). The Rules place a justified limit on this type of speech to ensure that Parliament Hill remains a welcoming place that all can safely gather.

6. The Application should be dismissed.

PART II – STATEMENT OF FACTS

7. The Respondent agrees with the statement of facts in the Applicants’ factum at paragraphs 4-9. The Respondent generally agrees with the Applicants’ statement of facts at paragraphs 10-18, subject to the additional facts in this factum.

A. The Rules of Parliament Hill that prohibit the graphic posters

8. The Rules in force now, and at the time the Applicants tried to show the posters on the Hill, were the 2023 Rules. The 2018 Rules were in force until May 3, 2023, but could only be posted online on May 9, 2023 — the day before the Applicants tried to show the posters — because of a

delay translating the Rules.² Out of a sense of fairness to the Applicants since the Rules had just been publicly posted, Cst. Trudel referenced the 2018 version of the Rules in his follow-up email to the Applicants.³

9. The slight wording changes between the 2018 and 2023 Rules did not meaningfully change the PPS officers' approach.⁴ The Rules in 2018 prohibited “[m]essages that are obscene, offensive, or that promote hatred”.⁵ The 2023 Rules prohibit “[o]bscene messages or messages that promote hatred or violence” and “signs or banners that display explicit graphic violence or blood”.⁶ Cst. Trudel and Cpl. Angeli — the two PPS officers involved in incident on May 10, 2023 — both indicated that their basis for saying the posters could not be shown was because the posters were obscene or promoted hatred.⁷ These phrases were in both sets of the Rules. The posters would have been prohibited under both the 2018 and 2023 Rules.⁸

B. The Applicants intended for viewers to visit the website on their posters

10. The Applicants intended for people viewing the posters to visit the website URL written in large block letters: whyhumanrights.ca. Maeve Roche — an Applicant and the Youth Coordinator at the Campaign Life Coalition (CLC) — and Matthew Wojciechowski — the vice-president of the Applicant, the CLC — agreed that by showing the posters, they were endorsing the website and actively encouraging people to visit it.⁹ Ms. Roche and Mr. Wojciechowski unequivocally

² Application Record, Tab 11, Affidavit of Cst. Daniel Trudel, p. 136 (para. 3).

³ Application Record, Tab 11, Affidavit of Cst. Daniel Trudel, p. 139 (para. 14).

⁴ Application Record, Tab 10, Affidavit of Supt. Matthew Ritchie, p. 112 (para. 13).

⁵ Application Record, Tab 10, Affidavit of Supt. Matthew Ritchie, p. 112 (para. 13).

⁶ Application Record, Tab 10, Affidavit of Supt. Matthew Ritchie, p. 112 (para. 13).

⁷ Application Record, Tab 17, Cross-examination of Cst. Daniel Trudel, p. 358; Application Record, Tab 19, Cross-examination of Cpl. Lucas Angeli, p. 395.

⁸ Application Record, Tab 17, Cross-examination of Cst. Daniel Trudel, p. 360; Application Record, Tab 10, Affidavit of Supt. Matthew Ritchie, p. 112 (para. 13).

⁹ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 572; Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 534-35.

acknowledged that the contents of the website represented the CLC's beliefs on abortion.¹⁰

11. The website whyhumanrights.ca contains statements about the Applicants' intended message on abortion, including.¹¹



12. Mr. Wojciechowski described the statement "abortion kills humans" as one of the CLC's core beliefs.¹²

13. The website also included statements under the "frequently asked questions" heading repeating the message that abortion is killing:¹³ (1) "If we wouldn't kill a human child after birth because of difficult circumstances, why would we kill the same child for the same reason when she's a little bit younger"; (2) "Survivors of sexual assault deserve our love and support, and innocent

¹⁰ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 572; Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 535.

¹¹ Application Record, Tab 15, Affidavit of Ariel Montana – Exhibit A, p. 347.

¹² Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 572.

¹³ Application Record, Tab 15, Affidavit of Ariel Montana – Exhibit A, p. 347.

children do not deserve the death penalty for the crime of their father”; and (3) “We can save the mother’s life without directly and intentionally killing the child”. As Ms. Roche and Mr. Wojciechowski agreed, intentionally killing a human being is the definition of murder in Canada.¹⁴ Mr. Wojciechowski acknowledged that the CLC was directing people to a website that accused women and abortionists of intentionally killing children.¹⁵

C. The Applicants intended for the posters to be disturbing

14. The Applicants showed the graphic posters to shock and disturb passersby.¹⁶ Ms. Roche agreed that a significant number of people seeing the posters would find them repugnant.¹⁷

15. Ms. Roche acknowledged that the mutilated images on the posters could possibly be quite shocking, traumatic, or cause psychological harm to a young child.¹⁸ When asked whether it was possible that a child between 8-10 years old may find the images traumatizing, Mr. Wojciechowski responded, “Sure, sure. In the same sense an adult would find it traumatizing, yes”.¹⁹

16. Nonetheless, the Applicants chose to show the posters on Parliament Hill in May — a time they knew groups of school children were on the Hill daily.²⁰ The Applicants took no precautions to ensure children were not exposed to the graphic imagery.²¹

¹⁴ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 573; Application Record, Tab 23, Cross-examination of Maeve Roche, p. 535.

¹⁵ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 573-75, 577.

¹⁶ Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 532-33; Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, pp. 555-56.

¹⁷ Application Record, Tab 23, Cross-examination of Maeve Roche, p. 533.

¹⁸ Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 537-38.

¹⁹ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 578.

²⁰ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 556, 580; Application Record, Tab 23, Cross-examination of Maeve Roche, p. 547.

²¹ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 586.

D. The posters were dated inaccurately or used a misleading dating method

17. Dr. Lovett's affidavit established that the purported ages of the fetuses on the posters were too low by 2-5 weeks.²² She was using gestational age, which is the method *all doctors* use to date a pregnancy.²³

18. In response, the Applicants provided affidavits suggesting that poster ages were accurate because they used a dating method utilized by embryologists: fetal age.²⁴ Fetal age is approximately two weeks less than gestational age. The Applicants' expert, Dr. Reilly, opined that the ages on the posters could be accurate, assuming the posters used fetal age.²⁵ Using gestational age, Dr. Reilly generally agreed with Dr. Lovett's assessment of the ages of the fetuses on Posters 1 and 3 and differed slightly on Poster 2.²⁶ Dr. Reilly felt he was unable to date the images on Posters 2 and 3 within 1-2 weeks because the photos were mutilated and there was no identifiable degree of magnification.²⁷ His inability to date these images could be explained by his lack of experience as an abortion care provider as compared to Dr. Lovett. Dr. Lovett has routinely performed abortions since 2010, is the Director of the Pregnancy Options Program at London Health Sciences Centre, and has been teaching medical and surgical abortion procedures to medical students for 15 years.²⁸ Dr. Reilly performs abortions on non-viable fetuses only — largely deceased fetuses,²⁹ sees approximately 1-2 aborted fetuses per month where the fetus has not already been altered by decomposition,³⁰ and does

²² Application Record, Tab 13, Affidavit of Dr. Erin Lovett, pp. 156-59 (paras. 9, 12, 14).

²³ Application Record, Tab 18, Cross-examination of Dr. Erin Lovett, pp. 386.

²⁴ Application Record, Tab 6, Affidavit of Josephine Luetke, p. 74 (para. 5-7); Application Record, Tab 9, Affidavit of Daniel Reilly, pp. 95.

²⁵ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 487.

²⁶ Application Record, Tab 9, Affidavit of Daniel Reilly, pp. 97-98 (paras. 10-12).

²⁷ Application Record, Tab 9, Affidavit of Daniel Reilly, pp. 97-98 (paras. 11-12).

²⁸ Application Record, Tab 13, Affidavit of Dr. Erin Lovett, p. 155 (paras. 2, 4).

²⁹ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 476-77.

³⁰ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 477-78, 505.

not teach abortion procedures to medical students.³¹ Despite offering an opinion about transillumination in his affidavit, he has never transilluminated fetal remnants.³²

19. The Applicants did not lead direct evidence through Josephine Luetke or Dr. Reilly about whether gestational or fetal age was used to date the images on the posters. Dr. Reilly could not provide an opinion about whether the ages of the fetuses on the posters indicated fetal age or gestational age because he was not involved in creating the posters.³³ Josephine Luetke, the CLC's education and advocacy director, could not provide anything other than her personal belief that fetal age was used.³⁴ Her personal belief that the CLC consistently uses fetal age was not shared by Mr. Wojciechowski, her superior and vice-president of the CLC. He was unaware of any policy the CLC had about using fetal or gestational age.³⁵ During his 14 years at the CLC, he could not remember having a conversation about whether the CLC used fetal or gestational age.³⁶ Neither Ms. Luetke nor the CLC were involved in creating the posters.³⁷

20. The posters do not indicate whether gestational or fetal age was used to date the fetuses.³⁸ The viewer must assume based on their understanding of pregnancy dating. According to Drs. Lovett and Reilly, medical professionals — including general practitioners, obstetricians, and gynaecologists — use gestational age, not fetal age.³⁹ Expectant mothers and fathers commonly understand the age of a fetus as gestational age.⁴⁰ In general, the public understands the age of a fetus

³¹ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 481.

³² Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 490.

³³ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 486-87.

³⁴ Application Record, Tab 6, Affidavit of Josephine Luetke, p. 74 (paras. 6-7).

³⁵ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, pp. 558-59.

³⁶ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, pp. 558-59.

³⁷ Application Record, Tab 22, Cross-examination of Josephine Luetke, pp. 612-13.

³⁸ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 487.

³⁹ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 482; Application Record, Tab 18, Cross-examination of Dr. Erin Lovett, p. 386.

⁴⁰ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 482.

in terms of gestational age.⁴¹ Fetal age is a method only used by embryologists.⁴²

E. The posters were manipulated and/or displayed unrepresentative abortion procedures

21. The Applicants' expert, Dr. Reilly, agreed with Dr. Lovett that the alleged aborted fetuses on the posters were manipulated and/or displayed abortion procedures unrepresentative of those used in Canada.⁴³

22. Dr. Reilly agreed with Dr. Lovett that the image on Poster 1 was either manipulated or depicted an unrepresentative and uncommon abortion and illumination procedure.⁴⁴ Dr. Reilly's opinion was that the image on Poster 1 likely showed an abortion done by dilation and sharp curettage — a method that has been unrepresentative of Canadian abortions since at least 1996.⁴⁵

23. Dr. Reilly agreed with Dr. Lovett that Posters 2 and 3, if real, would also have used an uncommon and unrepresentative abortion method.⁴⁶ He agreed with Dr. Lovett that the alleged aborted fetuses on Posters 2 and 3 had been manipulated post-abortion by someone making sharp cuts through the abdomens of the fetuses.⁴⁷ He agreed that the post-abortion cutting of the fetuses on Posters 2 and 3 rendered the images unrepresentative of a normal abortion procedure in Canada.⁴⁸

⁴¹ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 483.

⁴² Application Record, Tab 18, Cross-examination of Dr. Erin Lovett, pp. 385-86.

⁴³ Application Record, Tab 13, Affidavit of Dr. Erin Lovett, pp. 157-59 (paras. 10, 13, 15).

⁴⁴ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 494-95.

⁴⁵ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 488-89.

⁴⁶ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 497-98.

⁴⁷ Application Record, Tab 22, Cross-examination of Daniel Reilly, pp. 499-500.

⁴⁸ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 502.

PART III – ISSUES AND THE LAW

24. The Applicant raises four issues:

- A. Is Dr. Foster's evidence admissible as expert evidence?
- B. If so, can the lettered exhibits attached to Dr. Foster's cross-examination be made numbered exhibits?
- C. Do the Rules prohibiting displaying “obscene messages or messages that promote hatred” and “signs or banners that display explicit graphic violence or blood” on Parliament Hill infringe s. 2(b) of the *Charter*?
- D. If so, is the s. 2(b) infringement justified under s. 1 of the *Charter*?

A. Dr. Foster's evidence is admissible as expert evidence

25. The Applicants' challenges to Dr. Foster's qualification as an expert and the weight her opinion should be given are misplaced. The Applicants raise two issues with Dr. Foster's evidence: (1) she is providing opinion evidence about psychiatric diagnoses outside her scope of expertise; and (2) she is relying solely on inadmissible hearsay for her opinion and, therefore, her opinion is entitled to no weight.

26. Dr. Foster was not providing psychiatric diagnoses. She was drawing together her own research, other scholarly research, and the complaints to form educated opinions on the potential harms of graphic abortion imagery. She also was not relying solely on hearsay evidence and, to the extent she did, the hearsay evidence was corroborated by other sources.

Dr. Foster's expert opinion evidence

27. Dr. Foster is a Rhodes Scholar, Harvard-trained medical doctor, and has been researching

sexual and reproductive rights for over 20 years.⁴⁹ She currently leads action- and intervention-oriented research projects in 22 countries focused on sexual and reproductive health.⁵⁰ In Canada, she has developed an interdisciplinary program of work dedicated to abortion research. Her research includes large scale qualitative studies about experiences of Canadian abortion patients regarding the medical abortion regime and the impact of safe access zone laws on the safety, security, and mental health of abortion patients and providers.⁵¹ Dr. Foster provided expert evidence for the province of Ontario on the latter study in a challenge to the constitutionality of Bill 163, *Protecting a Woman's Right to Access Abortion Services Act, 2017*.⁵² In that case, she provided expert evidence about the impacts of anti-abortion protests outside abortion clinics on the safety, security, physical and mental health, and privacy of abortion patients.⁵³

28. Dr. Foster offered expert opinion evidence in this case on the potential impacts of graphic anti-abortion imagery on certain groups of people.⁵⁴ Based on her extensive experience in abortion research, review of scholarly research, and complaints submitted by individuals reporting harm they suffered by viewing anti-abortion imagery, Dr. Foster concluded that seeing unwanted anti-abortion imagery:⁵⁵

- “Can be deeply upsetting for members of the public, especially parents of young children and those concerned for children’s welfare”; and
- “Can have negative psychological impacts, especially on young children, women who have had abortions or experienced pregnancy loss, and women who have become pregnant from sexual violence and had abortions”.

⁴⁹ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 208 (paras. 3-6).

⁵⁰ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 208 (para. 6)

⁵¹ Application Record, Tab 14, Affidavit of Dr. Angel Foster, pp. 208-10 (paras. 7, 10).

⁵² Application Record, Tab 14, Affidavit of Dr. Angel Foster, pp. 209-10 (para. 10).

⁵³ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 210 (para. 10).

⁵⁴ Application Record, Tab 14, Affidavit of Dr. Angel Foster, pp. 211-13 (paras. 14-22).

⁵⁵ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 213 (para. 22).

29. Dr. Foster also offered evidence from her extensive research expertise on the report authored by the Applicants' proposed expert, Dr. Harvey.⁵⁶ The report purported to find that anti-abortion imagery was statistically proven to change peoples' minds on the legality of abortion. Dr. Foster's opinion was that the report is not an objective, scientific study that would ever have passed scrutiny to be published in a peer-reviewed journal.⁵⁷ Part-way through Dr. Harvey's cross-examination, the Applicants decided to withdraw her as a proposed expert. Despite the Applicants withdrawing Dr. Harvey as a proposed expert, the report is appended to Mr. Wojciechowski's affidavit.⁵⁸ As such, Dr. Foster's opinion on the report's lack of scholarly merit is still relevant opinion evidence for the Court that the Applicants have not challenged.

(1) Dr. Foster was not providing psychiatric diagnoses as part of her expert opinion

30. Dr. Foster's conclusions about the potential harms of the graphic abortion imagery — such as the posters the Applicants want to display to the unsuspecting public passing by on Parliament Hill — was not a psychiatric or psychological diagnosis of any kind. She readily acknowledged this.⁵⁹

31. Dr. Foster's answer in re-examination when asked whether her purpose was to diagnose people is a complete answer to the Applicants' challenge to her expertise:⁶⁰

Absolutely not. My purpose in paragraph 22 was to summarize a number of different sources that appear to be bringing us to the same conclusion. That includes the references or the source material included in the scoping review. Which also includes media accounts, personal narrative accounts as well as the personal stories that were shared with ARCC. And in those stories, some of which are included in my Affidavit, you know, these individuals have shared that there were negative psychological consequences. They have diagnosed that themselves. They have used those words about how upsetting it was. This is not me diagnosing them. This is me lifting up the voices of people who have shared these types of complaints.

⁵⁶ Application Record, Tab 14, Affidavit of Dr. Angel Foster, pp. 213-15 (paras. 23-24).

⁵⁷ Application Record, Tab 14, Affidavit of Dr. Angel Foster, pp. 213-15 (para. 24).

⁵⁸ Application Record, Tab 4, Affidavit of Matthew Wojciechowski – Exhibit B, pp. 31-53.

⁵⁹ Application Record, Tab 20, Cross-examination of Dr. Angel Foster, p. 421.

⁶⁰ Application Record, Tab 20, Cross-examination of Dr. Angel Foster, pp. 422-23.

And I will just say that while in this Affidavit -- I have the summary of the scoping review and the specific stories from the ARCC database, you know, my conclusions here are triangulated with the literature, what we were seeing in complaints that have been lodged against, within municipalities, reading about, kind of, why municipalities have taken, in Canada, have taken certain decisions with respect to restricting what can be shown and how, and how that's also been based on complaints. So really this is about the kind of totality of the source material. As we did not do interviews--that is in fact we have proposed to do as part of this, hopefully SSHRC-funded, multi-method study. Because I think it is important for researchers to use a rigorous process to explore what people's experiences are. And that is certainly something that's currently missing from the body of work that's out there. And that's exactly what we hope to do in the future but haven't had a chance to do that yet.

32. Dr. Foster was not providing psychiatric or psychological diagnoses.⁶¹ She provided a qualified opinion on *potential* harms that groups of people *may* face from viewing unsolicited, bloody, dismembered, and disfigured abortion images. Her language was careful. The terms “deeply upsetting” and “negative psychological impacts” cannot reasonably be called psychiatric or psychological diagnoses. Furthermore, her conclusion was wholly supported by the complaints and other source material she had.

(2) Dr. Foster’s opinion permissibly relied on corroborated hearsay

33. Dr. Foster’s opinion permissibly relied on some hearsay evidence, corroborated with her own and other scholarly research. It is settled law that expert witnesses are entitled to rely on hearsay evidence in formulating their opinions.⁶² The hearsay evidence is admissible to show the information the opinion is based on.⁶³ As long as the admissible hearsay evidence establishes a foundation for the expert’s opinion, the opinion remains available for consideration.⁶⁴ The only question is whether the

⁶¹ The Applicants’ reliance on *R. v. Selles*, [1997] O.J. No. 2502 (C.A.), at pp. 23-24 is misplaced. *Selles* does not stand for the general proposition that only psychiatrists can provide evidence about psychological harm. *Selles* was dealing with a very different issue: whether general practitioner doctors could give opinion evidence for the Crown about psychological harm suffered by a complainant in order to establish an essential element of a criminal offence.

⁶² *R. v. Paul*, [2002] O.J. No. 4733 (C.A.), at para. 56; *R. v. Gibson*, 2021 ONCA 530, at para. 201.

⁶³ *R. v. Gibson*, 2021 ONCA 530, at para. 202.

⁶⁴ *R. v. Gibson*, 2021 ONCA 530, at para. 203.

trier of fact may attach less weight to the expert opinion if it relies too heavily on hearsay.⁶⁵

34. The complaints relied upon for Dr. Foster’s opinion were hearsay that was corroborated by the rest of the source material available to her. For example, the scoping review written by Dr. Foster and her team explored similar themes around abortion imagery, including the finding that the imagery can “invade the privacy of residents who do not wish to encounter these images, distress children, and upset women and gender-diverse pregnancy capable individuals who have had a negative pregnancy experience or a spontaneous abortion.”⁶⁶ Dr. Foster also referenced in her testimony the similar types of issues municipalities have had due to anti-abortion flyers passed out to homes and, as a result, the bylaws the municipalities have passed.⁶⁷ In addition to these source materials, Dr. Foster was an expert in another Ontario proceeding where she provided expert opinion evidence about the impacts of anti-abortion protests outside abortion clinics on the safety, security, physical and mental health, and privacy of abortion patients.⁶⁸ Even the Applicants conceded that these posters could lead to psychological harm and trauma for some viewers.⁶⁹

35. This is not a case like the Applicants suggest where Dr. Foster is providing an opinion based on “concoctions”, “guesswork”, and “junk science”.⁷⁰ Dr. Foster was relying on a strong foundation of her own extensive academic research, her past experience of giving similar expert evidence, others’ academic scholarship, and legislative evidence that municipalities have passed restrictive bylaws to

⁶⁵ *R. v. Gibson*, [2021 ONCA 530](#), at para. 203.

⁶⁶ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit C, p. 259.

⁶⁷ Application Record, Tab 20, Cross-examination of Dr. Angel Foster, pp. 423-24. Some municipalities have passed bylaws about the regulation of graphic abortion imagery on flyers delivered to homes, such as [New Westminster, BC](#); [Burlington, ON](#); [Blandford-Blenheim, ON](#); [Calgary, AB](#); and [London, ON](#).

⁶⁸ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 210 (para. 10).

⁶⁹ Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 537-38; Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 578.

⁷⁰ Applicants’ Factum, para. 23.

address potential harms of graphic anti-abortion imagery.⁷¹ Considering this strong foundation of largely non-hearsay material, the public complaints submitted directly by members of the public to ARCC — as well as some reporting to their MP, MPP, and/or the police — are dependable enough hearsay that Dr. Foster was entitled to rely on as part of her opinion. There is no basis for the weight of Dr. Foster’s expert evidence to be diminished.

B. Exhibit A on Dr. Foster’s cross-examination should remain a lettered exhibit

36. Exhibit A entered by the Applicant during Dr. Foster’s cross-examination — a call for complaints from the ARCC website⁷² — cannot be converted into a numbered exhibit and, therefore, cannot be considered as evidence on this Application. Lettered exhibits are not evidence.⁷³

37. The Applicants cannot meet their burden to prove Exhibit A is authenticated because they led no evidence to authenticate it. To become a numbered exhibit, and therefore form part of the court record, the Applicants must prove Exhibit A’s authenticity by evidence capable of supporting a finding that the document is what is purported to be.⁷⁴ The Applicants did not append Exhibit A to an affidavit where someone attested to where they got the screenshot, when they allegedly visited the ARCC website, and that the document had not been altered. The *Canada Evidence Act* and the *Ontario Evidence Act* specifically contemplate an affidavit as the means of proving authenticity.⁷⁵

38. Dr. Foster cannot authenticate the document for the Applicants. Dr. Foster is not part of ARCC and had nothing to do with creating the ARCC website or any call for complaints.⁷⁶ She has

⁷¹ The Applicants’ reliance on *R. v. Mathisen*, [2008 ONCA 747](#), at para. [126](#) is misplaced. *Mathisen* dealt with an expert whose proposed expertise came solely from reviewing literature on a topic outside the expert’s area of education and training.

⁷² Application Record, Tab 20, Cross-examination of Dr. Angel Foster – Exhibit A, p. 441.

⁷³ *Wasyluk v. Simcoe (County)*, [2023 ONCA 473](#), at para. [10](#).

⁷⁴ *Canada Evidence Act*, R.S.C., 1985 c. C-5, [s. 31.1](#); *Evidence Act*, R.S.O. 1990, C E.23, [34.1\(4\)](#).

⁷⁵ *Canada Evidence Act*, R.S.C., 1985 c. C-5, [s. 31.6\(1\)](#); *Evidence Act*, R.S.O. 1990, C E.23, [34.1\(9\)](#).

⁷⁶ Application Record, Tab 20, Cross-examination of Dr. Angel Foster, pp. 407-08.

no means of authenticating the webpage in terms of it being dated correctly or that the content was unaltered. Dr. Foster's evidence on cross-examination was that the complaints she included in her affidavit were submitted to ARCC over the past three years.⁷⁷ Exhibit A is dated March 12, 2025 — only four months before Dr. Foster's cross-examination. Dr. Foster cannot authenticate a call for complaints she had nothing to do with creating, had not seen, nor was even the source of all the complaints she received.

39. The Applicants have led no evidence to authenticate Exhibit A to Dr. Foster's cross-examination. It must remain a lettered exhibit that can form part of the appeal record but cannot be considered as part of the evidence on this Application.

C. The Rules at issue infringe s. 2(b) of the Charter

40. The Respondent concedes that the effect of the Rules at issue is to limit expressive conduct and therefore infringe s. 2(b) of the *Charter*.

D. The s. 2(b) infringement is justified under s. 1 of the Charter

(1) The Doré analysis cannot apply to this Application

41. The Applicants' suggestion that the *Doré* analysis applies instead of the *Oakes* s. 1 analysis is wrong for four reasons:

- i. *The Applicants have not brought an application for judicial review.* The *Doré* analysis is only applicable where the Court is being asked to judicially review the reasonableness of an administrative decision-maker's discretionary

⁷⁷ Application Record, Tab 20, Cross-examination of Dr. Angel Foster, pp. 407-08.

decision.⁷⁸ Neither the Applicants' originating notice of application nor factum indicate that they are attempting to bring a judicial review.

- ii. *The Applicants do not seek a remedy that is available following a successful application of Doré.* The Applicants seek a declaration that the Rules are of no force and effect under s. 52 of the *Constitution Act*.⁷⁹ Applying the *Doré* framework, if the administrative decision-maker's discretionary decision is found unreasonable, the remedy is setting aside the administrative decision, not a declaration of invalidity of the law itself.⁸⁰ Even in the administrative law context, a declaration of invalidity under s. 52 follows where the Applicant successfully challenges the constitutionality of the decision maker's enabling statute and the decision maker fails to meet its burden under s. 1.⁸¹
- iii. *The Parliamentary Protective Service officers are not administrative decision makers.* PPS officers are not administrative decision makers such that their decision making even could be judicially reviewed. Administrative decision makers are bodies empowered by statute to administer a statutory regime.⁸² The PPS nor its officers satisfy this definition. They are not an administrative body, nor are they empowered by statute to administer a statutory regime. PPS officers are individuals, like border services officers or police officers, who enforce a set of rules created for them.
- iv. *If the Applicants are attempting to bring an application for judicial review, this is the wrong court.* Applications for judicial review shall be brought in the Divisional Court.⁸³ The Applicants did not bring this Application in

⁷⁸ *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, [2023 SCC 31](#), at para. [60](#).

⁷⁹ Applicants' Factum, para. 60.

⁸⁰ See eg. *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, [2023 SCC 31](#), at para. [114](#).

⁸¹ See eg. *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003 SCC 54](#), at paras. [107](#), [118](#).

⁸² *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), at para. [24](#); *Dunsmuir v. New Brunswick*, [2008 SCC 9](#), at para. [27](#).

⁸³ [Judicial Review Procedure Act](#), R.S.O. 1990, c. J.1, s. 6(1).

Divisional Court, nor have they applied for the leave exception based on urgency to have the judicial review heard in the Superior Court.⁸⁴

42. The Applicants have not brought, nor argued, a judicial review such that the *Doré* framework applies. The Applicants also have not addressed why they believe that the PPS is an administrative decision maker or how an application of *Doré* entitles them to a remedy under section 52.

43. This is a constitutional challenge to the Rules of Parliament Hill, which are administered by the PPS. Given the PPS has acknowledged an infringement of s. 2(b) of the *Charter*, the appropriate next step is to demonstrate under s. 1 that the infringement is justified.

(2) The s. 2(b) infringement is justified under s. 1 of the *Charter*

44. The Rules at issue are a reasonably justified limit on s. 2(b). The Rules have a pressing and substantial purpose: ensuring the safety and security of all on Parliament Hill as well as promoting a welcoming environment for all people to attend Parliament Hill. This purpose is rationally connected to the effect of the Rules by prohibiting speech that may cause psychological harm to women and children and is intended to denigrate women who choose to have abortions. The Rules are minimally impairing because there are no other reasonable alternatives available that would substantially serve the purpose of the Rules. Finally, the deleterious effect of the Rules — limiting a small, specific subset of misleading, discriminatory speech — is outweighed by the benefits: protection of the public from images that may be psychologically harmful and limiting discriminatory messaging aimed at women who have had abortions or are considering it.

45. As a preliminary matter, it is necessary to clarify the nature of the speech at issue.

⁸⁴ [Judicial Review Procedure Act](#), R.S.O. 1990, c. J.1, s. 6(2).

a) *The nature of the speech at issue includes the posters and content on the affiliated website*

46. The nature of the speech at issue is the content visible on the three posters — the images of dismembered fetuses, the purported ages of the fetuses, and the website URL (whyhumanrights.ca) — as well as the content of the website. The poster and the website are inextricably linked when considering the speech at issue. The viewer first sees the word "ABORTION" on the poster, then a graphic abortion image, then a website saying "whyhumanrights.ca". After having a visceral reaction to the image, viewers are informed there is a human rights issue with abortion. The "why" before "human rights" tells viewers that the website contains answers. The "answers" on the website amplify the message of the posters. The "answer" on the website is that abortion is a human rights violation because it is "intentional killing". Viewed together, the poster, URL, and website are the speech the Applicants seek to protect.

47. The content of the website is a legitimate part of the legal context because the only purpose of including the website URL was to invite readers to visit the website.⁸⁵ The website is clearly an extension of the poster content.⁸⁶ The Applicants admitted this. Ms. Roche and Mr. Wojciechowski agreed that by showing the posters, they were endorsing the website and actively encouraging people to visit it.⁸⁷ Both unequivocally acknowledged that the contents of the website represented the CLC's beliefs on abortion.⁸⁸

48. The poster contents were entered into evidence through affidavit⁸⁹ and must form part of the

⁸⁵ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2018 ABCA 154](#), at para. 8.

⁸⁶ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2018 ABCA 154](#), at para. 8; *Canadian Centre for Bio-Ethical Reform v. South Coast British Columbia Transportation Authority*, [2018 BCCA 344](#), at para. 59.

⁸⁷ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 572; Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 534-35.

⁸⁸ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 572; Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 535.

⁸⁹ Application Record, Tab 15, Affidavit of Ariel Montana – Exhibit A, p. 347.

analysis of the type and value of the expressive content of the speech the Applicants ask this Court to protect.

b) The Rules are prescribed by law

49. The Rules are prescribed by law, as they are binding rules of general application that are sufficiently precise and accessible to the public.

50. The Rules are “law” for the purposes of s. 1. To be “law”, an authorized government entity must be authorized to enact the policy and the policy must contain binding rules of general application.⁹⁰ The Committee on the Use of Parliament Hill was created by Order-in-Council in 1942 with the purpose of ensuring the security of the general public on Parliament Hill and maintain the integrity of the Hill.⁹¹ The Rules were created pursuant to that mandate. The Committee’s authority comes from the leaders of the Senate and House of Commons.⁹² The Committee is comprised of representatives from the Senate, House of Commons, PPS, National Capital Commission, Privy Council Office, and departments of Canadian Heritage and Public Works and Government Services.⁹³ The Rules are akin to government policies that emanate from a government entity but are similar in form and substance to legislation.⁹⁴ The Rules are not informal guidelines or interpretive aids internal only to the PPS.⁹⁵ The Rules are formal, publicly available, and enforced on the general public.

51. The phrase “prescribed by” requires that the “law” — the Rules — are sufficiently precise and accessible.⁹⁶ The Rules are sufficiently precise. The law must allow people to regulate their

⁹⁰ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [50](#).

⁹¹ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 109 (para. 5).

⁹² Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 110 (para. 6).

⁹³ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 110 (para. 6).

⁹⁴ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [58](#).

⁹⁵ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [58](#).

⁹⁶ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [50](#).

conduct by it and provide guidance to those who apply the law.⁹⁷ The Rules provide specific guidelines for the public about what is allowed and not allowed. If people have concerns about compliance with the Rules, they can apply for a permit. The Committee will consider the request, potentially engage in a dialogue for clarity on the request, and will provide a written response.⁹⁸ People can also ask PPS officers on the Hill if something complies with the Rules. The Rules and availability of the permit process or questions sufficiently allow people to regulate their conduct.

52. The Rules are specific enough that the PPS officer have sufficient guidance to apply them. The PPS officers in this case had no difficulty interpreting the plain language of the law similarly. Cst. Trudel defined “obscene” as “abhorrent”, describing “pictures of destroyed, disfigured fetuses” as abhorrent, or obscene.⁹⁹ Cpl. Angeli defined “obscene” as “something that is repulsive, disgusting”.¹⁰⁰ The dictionary definition of obscene includes the terms “repulsive”, “abhorrent”, “disgusting to the senses”.¹⁰¹ Both identified that the images may promote hatred towards women who had abortions or trauma around abortions.¹⁰² The PPS officers and the general public would approach the Rules with the same general knowledge, as neither administer the criminal law nor are intimately acquainted with the criminal law definitions of “obscene” or “promoting hatred”.

53. The Rules are also accessible. They are published publicly online for reference and notice to the public,¹⁰³ enforced daily by PPS officers on the Hill,¹⁰⁴ and provided to people who have applied for permits for demonstrations on the Hill.¹⁰⁵

⁹⁷ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. 50.

⁹⁸ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie – Exhibit B, p. 128.

⁹⁹ Application Record, Tab 17, Cross-examination of Cst. Daniel Trudel, pp. 363-64.

¹⁰⁰ Application Record, Tab 19, Cross-examination of Cpl. Lucas Angeli, p. 395.

¹⁰¹ Mirriam Webster Dictionary, “[obscene](#)”.

¹⁰² Application Record, Tab 17, Cross-examination of Cst. Daniel Trudel, p. 364; Application Record, Tab 19, Cross-examination of Cpl. Lucas Angeli, p. 396.

¹⁰³ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 110 (para. 8).

¹⁰⁴ Application Record, Tab 11, Affidavit of Cst. Daniel Trudel, pp. 138-39 (para. 13).

¹⁰⁵ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 549.

c) *The purpose of the Rules is pressing and substantial*

54. The purpose of the Rules at issue — to ensure the safety and security of all people on Parliament Hill and promote a welcoming environment for all — is pressing and substantial. This purpose is included in the preamble of the Rules:¹⁰⁶

Parliament Hill is the seat of Canada's Parliamentary democracy, a place where parliamentarians from across the country meet to make laws that affect the lives of every Canadian. Parliament is also a place to meet, a place to express views, a place to celebrate, and a place to visit.

Given the foregoing and the necessity to ensure it remains a safe and secure environment, it is necessary to establish general rules surrounding organized activities and events on Parliament Hill.

55. This preamble describes both objectives: maintaining a safe and secure environment for all, and promoting a welcoming place for all to meet, express views, celebrate, and visit. The safety and security the Rules are concerned with is physical, emotional, and psychological safety.¹⁰⁷ The Rules help ensure that Parliament Hill is a place that all people feel welcome, safe, and secure.¹⁰⁸

56. The Supreme Court has recognized that providing a safe and welcoming environment is a pressing and substantial purpose.¹⁰⁹

d) *The effect of the Rules is rationally connected to its purpose*

57. The limit the Rules impose on s. 2(b) in this case furthers the goals of providing a safe, secure, and welcoming environment for all on Parliament Hill. Rational connection is not an onerous standard.¹¹⁰ It requires a rational connection, not a complete rational correspondence.¹¹¹ All that the

¹⁰⁶ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie – Exhibit B, p. 126.

¹⁰⁷ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 113 (para. 15).

¹⁰⁸ Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 113 (para. 16).

¹⁰⁹ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [76](#).

¹¹⁰ *R. v. Ndhlovu*, [2022 SCC 38](#), at para. [121](#).

¹¹¹ *R. v. Ndhlovu*, [2022 SCC 38](#), at para. [121](#).

Respondent needs to show is that “it is reasonable to suppose that the limit *may* further the goal, not that it *will* do so”.¹¹²

58. It is reasonable to suppose that the Rules may further the goal of providing a safe and welcoming environment. The Applicants wanted to hold up large posters of graphic abortion imagery, inviting viewers to visit a website that accuses women of intentionally killing children. The website also says that abortion is wrong even where the pregnancy is a result of sexual assault.¹¹³ The Applicants wanted to hold up these large posters in the middle of the day on Parliament Hill where school children and members of the public visit daily. Dr. Foster’s evidence establishes that seeing unwanted graphic abortion imagery can: (a) “be deeply upsetting for members of the public, especially parents of young children and those concerned for children’s welfare”; and (b) “have negative psychological impacts, especially on young children, women who have had abortions or experienced pregnancy loss, and women who have become pregnant from sexual violence and had abortions.”¹¹⁴ Furthermore, the Alberta Court of Appeal found it appropriate to take judicial notice that graphic abortion imagery with messaging very similar to the posters and website in this case could cause psychological harm to women who had terminated a pregnancy or considered doing so.¹¹⁵

59. Not only could the graphic imagery and messaging cause harm, it also is discriminatory against women who have had abortions. Content that is discriminatory undermines the objective of providing a safe and welcoming environment.¹¹⁶ The website’s messaging is clear: women who get abortions are intentionally killing “humans”.¹¹⁷ The Applicant, Ms. Roche, and Mr. Wojciechowski,

¹¹² *Alberta v. Hutterian Brethren*, [2009 SCC 37](#), at para. 48 [italics added].

¹¹³ Application Record, Tab 15, Affidavit of Ariel Montana – Exhibit A, p. 347.

¹¹⁴ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 213 (para. 22).

¹¹⁵ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2018 ABCA 154](#), at paras. 62, 84.

¹¹⁶ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. 76.

¹¹⁷ Application Record, Tab 15, Affidavit of Ariel Montana – Exhibit A, p. 347.

the vice-president of the Applicant CLC, agreed that intentionally killing a human being is the definition of murder in Canada.¹¹⁸ The CLC was directing people to a website that accused women and abortionists of intentionally killing children.¹¹⁹ On any reasonable view, likening women and doctors who legally terminate a pregnancy to murderers is likely to promote hatred against them.¹²⁰

60. Preventing graphic imagery and messaging that may cause harm to children and particular groups of women as well as promote discrimination against women who have had abortions is rationally connected to maintaining a safe and welcoming environment on Parliament Hill.

e) *The Rules are minimally impairing*

61. The Rules are a minimally impairing means of furthering the pressing and substantial purpose of maintaining a safe, secure, and welcoming environment on Parliament Hill. There are no alternative, less drastic means of achieving the purpose in a real and substantial manner.¹²¹

62. The PPS officers could not have simply cordoned off an area for the Applicants to show the posters. Parliament Hill is an open area where people could see the posters from some distance. The posters were large: 3-4 feet tall by 2-3 feet wide.¹²² The brightly colored, bloody images were almost the entirety of the posters. Given that many people — including young children and women vulnerable to the anti-abortion imagery — would almost inevitably still walk by and see the signs, the Rules' purpose would not be achieved in a real and substantial manner. The hostile nature of the messaging and potential harms of seeing the posters would not be attenuated.

¹¹⁸ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 573; Application Record, Tab 23, Cross-examination of Maeve Roche, p. 535.

¹¹⁹ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 573-75, 577.

¹²⁰ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2018 ABCA 154](#), at para. 71.

¹²¹ *Alberta v. Hutterian Brethren*, [2009 SCC 37](#), at para. 55.

¹²² Application Record, Tab 11, Affidavit of Cst. Daniel Trudel, p. 137 (para. 10).

63. The Rules are tailored to ensure they do not overly impair the right to free speech. The Rules balance the need for a safe, secure, and welcoming environment on Parliament Hill with the need to respect free speech.¹²³ A violation of the Rules does not result in a penalty of any kind — administrative, civil, or criminal. Rather, once people have complied with the Rules, they are allowed to continue expressing themselves on Parliament Hill.¹²⁴ The Applicants could have shown signs that did not have the same kind of graphic abortion imagery. Aside from not being able to show the offending posters, the Applicants were in no way prevented from expressing themselves freely on Parliament Hill.

64. The Rules preventing the Applicants from showing the posters minimally impairs the Applicants' right to free speech while still achieving the goal of maintaining a safe, secure, and welcoming Parliament Hill.

f) The salutary effects of the Rules outweigh the deleterious effect

65. The salutary effects of the Rules outweigh the deleterious effect on the Applicants' interest in unrestricted free speech.

The deleterious effect of the s. 2(b) limit is attenuated

66. The deleterious effect of the s. 2(b) limit is attenuated for two reasons: (1) the limit is only a partial denial of the Applicants' right to free speech on Parliament Hill; and (2) the misleading nature of the speech the Applicants seek protection for deserves less protection because it undermines s. 2(b)'s truth-seeking function.

¹²³ Application Record, Tab 10, Affidavit of Supt. Matthew Ritchie, p. 112 (para. 14); Application Record, Tab 12, Affidavit of Cpl. Lucas Angeli, p. 152 (para. 8); Application Record, Tab 17, Cross-examination of Cst. Daniel Trudel, p. 367.

¹²⁴ Application Record, Tab 12, Affidavit of Cpl. Lucas Angeli, p. 152 (para. 8).

67. The deleterious effect of the Rules that the Applicants complain of is not being able to display their large posters freely on Parliament Hill. This is not a complete denial of their right to free speech on Parliament Hill. Rather, it is a measured limit on that right. There was no suggestion that the CLC could not display signs with messages consistent with their cause. The CLC was permitted to hold a press conference and an organized march advocating for their position. Furthermore, the CLC held the march in previous years without this type of signage.¹²⁵ The Rules must balance the Applicants' interest in unrestricted free speech with the rights of all who visit and work on Parliament Hill to enjoy a safe and welcoming environment. Freedom of expression "does not encompass the right to use any and all government property for purposes of disseminating one's views on public matters."¹²⁶

68. Furthermore, the type of expressive activity the Applicants seek protection for undermines the truth-seeking function of s. 2(b). The values underlying the freedom of expression — individual self-fulfillment, finding the truth through the open exchange of ideas, and the political discourse fundamental to democracy — inform the context of the violation.¹²⁷ It is destructive to the values of freedom of expression, as well as the other values in a free and democratic society, to treat all expression as equally crucial to the values at the core of s. 2(b).¹²⁸ The posters and website provide misleading information to elicit a reaction from viewers. Although misleading and false statements receive protection under s. 2(b), misleading and false statements undermine the value of the truth-seeking function of s. 2(b). The content of the posters and website mislead the public by:

- *Labeling the alleged fetuses on the posters are younger than they really are.* This is a common technique utilized by anti-abortion activists to distress viewers by making them think that older, more developed fetuses are first-trimester fetuses.¹²⁹ The

¹²⁵ Application Record, Tab 17, Cross-examination of Matthew Wojciehowski, pp. 556-57.

¹²⁶ *Committee for the Commonwealth of Canada v. Canada*, [\[1991\] 1 S.C.R. 139](#), at 165-66.

¹²⁷ *Saskatchewan v. Whatcott*, [2013 SCC 11](#), at para. 65.

¹²⁸ *R. v. Keegstra*, [\[1990\] 3 S.C.R. 697](#), at 760.

¹²⁹ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit C, pp. 259-60.

Applicants' suggestion that the posters are dated using fetal age is wholly unsupported on the record. The Applicants led no evidence to substantiate this belief.¹³⁰ Regardless, nothing on the posters signifies the ages of the fetuses are dated using "fetal age".¹³¹ The evidence is clear that the public would be familiar with gestational age, not fetal age.¹³² With no signifier on the poster, most viewers would reasonably believe that the posters used gestational age. Using gestational age, the ages of the fetuses on the posters are grossly misleading in an attempt to elicit a visceral reaction from the viewer.

- *Displaying abortion imagery that is manipulated and/or completely unrepresentative of Canadian abortion methods.* Both medical experts agreed that all the alleged abortion images used methods of abortion that were unrepresentative of Canadian abortions. They agreed that the presentation of the alleged abortion images was unrepresentative of any medical viewing technique. The experts further agreed that two of the posters had even been physically manipulated post-abortion by cutting the torso open. The posters did not acknowledge any of these post-abortion manipulations or the unrepresentative abortion methods employed.¹³³
- *Informing the public that abortion is akin to intentional killing — murder.* By showing the posters with the website URL, the CLC was inviting viewers to visit the website that accused women and abortion doctors of intentionally killing children.¹³⁴ It is uncontroversial that intentionally killing someone is murder. The website fails to explain that abortion is legal in Canada or that fetuses are not considered human beings under Canadian law.¹³⁵ The clear message is that abortion is killing. This is categorically false in Canadian law.¹³⁶

¹³⁰ See paragraph 19 above for the full facts on this point.

¹³¹ Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 487.

¹³² Application Record, Tab 22, Cross-examination of Daniel Reilly, p. 483.

¹³³ See paragraphs 21-23 above for the full facts on this bullet.

¹³⁴ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 573-75, 577.

¹³⁵ "The law of Canada does not recognize the unborn child as a legal or juridical person": *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [\[1997\] 3 S.C.R. 925](#), at para. 11. See also *Criminal Code*, R.S.C., 1985, c.C-46, s. [223\(1\)](#).

¹³⁶ See paragraphs 11, 13 above for the full facts on this point.

69. The Applicants were clear that the purpose of showing the posters was to convey the reality of abortion.¹³⁷ They also agreed that the posters would have to be accurate and true to convey the reality of abortion.¹³⁸ Yet, the abortion content on the posters and website was not accurate or true. The lack of accuracy and truth on the posters undermines both the truth-seeking function of s. 2(b) as well as the Applicants' own goals in displaying the posters.

The salutary effects of the Rules outweigh the limited deleterious effect

70. The salutary effects of the Rules are twofold: (1) protecting members of the public — young children, women who have had abortions or experienced pregnancy loss, and women who have become pregnant from sexual violence and had abortions — who may experience negative psychological impacts from viewing the unwanted graphic abortion imagery; and (2) limiting discriminatory public messaging aimed at women who want to, or have had, abortions.

71. The protection of members of the public who may experience psychological harm from seeing the unwanted imagery on the posters is an important beneficial effect of the Rules. The Applicants' evidence was that: (a) they showed the posters to shock and disturb passers by;¹³⁹ (b) a significant number of people seeing the posters would find them repugnant;¹⁴⁰ (c) the mutilated images on the posters could possibly be quite shocking, traumatic, or cause psychological harm to a young child;¹⁴¹ (d) that both children and adults could find the imagery traumatizing;¹⁴² and (e) the CLC took no

¹³⁷ Application Record, Tab 23, Cross-examination of Maeve Roche, p. 523; Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 561-62.

¹³⁸ Application Record, Tab 23, Cross-examination of Maeve Roche, p. 523; Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, pp. 561-62.

¹³⁹ Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 532-33; Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, pp. 555-56.

¹⁴⁰ Application Record, Tab 23, Cross-examination of Maeve Roche, p. 533.

¹⁴¹ Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 537-38; Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 578.

¹⁴² Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 578.

precautionary steps to ensure young children were not exposed to the content.¹⁴³ The Applicants led no expert evidence to contradict Dr. Foster's conclusions. Dr. Foster's evidence established that seeing unwanted anti-abortion imagery:¹⁴⁴

- “Can be deeply upsetting for members of the public, especially parents of young children and those concerned for children’s welfare”; and
- “Can have negative psychological impacts, especially on young children, women who have had abortions or experienced pregnancy loss, and women who have become pregnant from sexual violence and had abortions”.

72. Dr. Foster’s evidence is based in part on the complaints received by individuals who reported negative psychological impacts from viewing unwanted graphic abortion imagery. For example:

- “Earlier that fall I had an abortion it was a hard decision for me to make and weighed on me and approx. a week later I see these two young girls, they didn’t look more than 18, walking from house to house putting something in everyone’s mailbox. I went out to check it out after they had left the street and found the very graphic pro-life pamphlet they had dropped into my mailbox. Making the decision to have an abortion doesn’t always come easy and to be confronted with this horrible imagery put me right back to the day and I broke down right on my front porch.”¹⁴⁵
- “I was in bed when I saw someone walk up to our door and leave something. When I got up, I found the flyer in the shoved between the doors. I had had a miscarriage at home the night before - I had been more than 11 weeks pregnant. The fetus’s body, my little one, was still in the bathroom as it hadn’t even been 6 hours since it happened. I was devastated. For them to use this kind of image spreading false information rocked me. I sat in my diaper (the bleeding from my miscarriage still happening) and called my MP and MPP in tears about how this was possible and still happening. Never heard back from my MPP but my MP’s office called to say that since it wasn’t Canada post, there was nothing to be done. I texted the mothers in my community group chat to warn them about the false info and images circulating but it didn’t seem like enough.”¹⁴⁶
- “I am currently 14 weeks pregnant as a high risk pregnancy. While I myself would not choose to have an abortion I strongly believe in the woman’s right to choose. Upon finding this brochure on my door step I was physically sick to my stomach from the horrific disturbing images. Emotionally I was sick and sobbed for awhile. The images were close in age to my baby which I could lose being high risk. This was disturbing

¹⁴³ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 586.

¹⁴⁴ Application Record, Tab 14, Affidavit of Dr. Angel Foster, p. 213 (para. 22).

¹⁴⁵ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit E, p. 276.

¹⁴⁶ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit E, p. 276.

and unnecessary. I'm thankful my children did not see the flyer. I was physically and emotionally sick over it.”¹⁴⁷

- “I found the flyer wedged in my door when I arrived home from spending the day with my best friend at her chemo treatment. At first I was in disbelief, that someone, anyone could create such graphic images and leave this wedged in my door, for anyone to see, including children. While I don't have children there are many in my neighbourhood and I can't imagine the damaging effect these images would have. Since I had an abortion early in my life, this triggered many emotions and brought back the trauma of going through that. I 100% believe in the right to choose and I don't regret my decision but seeing these images brought on many emotions, including guilt, which is their purpose I suppose. I called the number on the flyer and left a message on their system advising that I would be calling my local MPP to have this stopped, I asked them why they would use such tactics without any thought for who would receive this flyer (children).”¹⁴⁸
- “I was about 11 years old when I grabbed the mail out of the mail box on my way home from school. There was a graphic post card with late term aborted fetuses on it and it was very distressing for me to experience. I didn't understand what to make of it and nobody ultimately brought it up again. I was very young and didn't understand what abortion was. It didn't make me feel any way about abortion (again, I didn't even know what it was). The only thing it did was expose me to disturbing images which stuck with me for a very long time.”¹⁴⁹
- “A man and woman were seen (on camera) delivering graphic (images of aborted foetuses) anti-choice flyers to my front door. This was deeply upsetting to my entire family. These images are graphic and abhorrent, and neither I nor my children and husband consented to view these images. Once the mail was collected, there was no way to avoid seeing these images, and they profoundly disturbed all of us.”¹⁵⁰

73. Dr. Foster's evidence is further supported by caselaw acknowledging the harm this exact type of graphic abortion imagery can have on women. The Alberta Court of Appeal has found that even without medical or specific evidence of the harm, it was reasonable for a judge to take judicial notice that this type of imagery would likely cause harm to women who terminated a pregnancy or considered doing so.¹⁵¹ In that case, the Canadian Centre for Bio-Ethical Reform — the creators of the posters and website at issue in this case — wanted to show graphic anti-abortion imagery linked

¹⁴⁷ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit E, p. 277.

¹⁴⁸ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit E, p. 278.

¹⁴⁹ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit E, p. 278.

¹⁵⁰ Application Record, Tab 14, Affidavit of Dr. Angel Foster – Exhibit E, p. 280.

¹⁵¹ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2018 ABCA 154](#), at para 84.

to their website. Similar to that case, the imagery and language the Applicants want to show is intended to be shocking and disturbing¹⁵² and portray abortion as the inhumane dismemberment of innocent children.¹⁵³ In addition to considering Dr. Foster's expert evidence, it is open to this Court to take judicial notice of the harm that graphic anti-abortion imagery has on women who have terminated a pregnancy or who have considered doing so.

74. The Applicants want to show their posters in a place with many children present. Hundreds of children are on Parliament Hill daily in May,¹⁵⁴ which is when the Applicants hold their march every year. The Applicants are well aware that many children will be on the Hill.¹⁵⁵ The likelihood of children being present in the location where the speech is happening is important. The Supreme Court has recognized the need to protect children because of their vulnerability.¹⁵⁶ The vulnerability of children justifies the measures in the Rules that may privilege them over adults in matters of free expression.¹⁵⁷ The Court can take judicial notice that society routinely restricts audiences for certain types of speech, such as age restrictions on gory movies.¹⁵⁸ Where the audience cannot be restricted — as on Parliament Hill — it is acceptable and justifiable to restrict the content to protect vulnerable groups, such as children.¹⁵⁹ Children should not be forced to view potentially upsetting images in a public place.¹⁶⁰

75. Furthermore, many of the passersby involuntarily see the imagery and, as a result, are exposed

¹⁵² Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 532-33.

¹⁵³ Application Record, Tab 23, Cross-examination of Maeve Roche, pp. 529-30; Application Record, Tab 15, Affidavit of Ariel Montana – Exhibit A, p. 347 (fetuses are described as “innocent children”; abortion is described as a “human rights violation”); Application Record, Tab 4, Affidavit of Matthew Wojciechowski, pp. 10.

¹⁵⁴ Application Record, Tab 10, Affidavit of Supt. Matthew Ritchie, p. 111 (para. 12).

¹⁵⁵ Application Record, Tab 24, Cross-examination of Matthew Wojciechowski, p. 556, 580; Application Record, Tab 23, Cross-examination of Maeve Roche, p. 547.

¹⁵⁶ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [78](#).

¹⁵⁷ *Canada (AG) v. JTI-Macdonald*, [2007 SCC 30](#), at para. [94](#).

¹⁵⁸ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2016 ABQB 734](#), at para. [71](#).

¹⁵⁹ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2016 ABQB 734](#), at para. [72](#).

¹⁶⁰ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2016 ABQB 734](#), at para. [72](#).

to potential harm. Viewers' ability to choose to be in a location is relevant to the s. 1 analysis.¹⁶¹ Parliament Hill is meant to be a place where all can gather safely in a welcoming environment.¹⁶² Subjecting unwitting passers by to misleading and unwanted graphic imagery that may be harmful to them undermines the welcoming nature of Parliament Hill.

76. The second salutary effect of the Rules is to protect women who visit Parliament Hill from speech that is discriminatory. The posters and website that portray women who terminate pregnancies as "killers" of children is "on any reasonable view...likely to promote hatred" against women.¹⁶³ A woman's right not to be discriminated against is enshrined under s. 15 of the *Charter*.¹⁶⁴ The balancing of competing *Charter* rights should also take into consideration Canada's international law treaty obligations, which reflect international recognition that certain types of expression may be limited in furtherance of other fundamental values.¹⁶⁵ Canada is a state party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. This Convention requires Canada to ensure through law the practical realization of eliminating discrimination against women (Article 2 (a)) and to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise (Article 2 (e)).¹⁶⁶ The Rules are a measure to limit discrimination against women from speech that intends to vilify a woman's legal choice to have an abortion. Equating women who have legal abortions to killers or murderers undoubtedly vilifies them. Exposing a group to discrimination and/or vilification can distort the robust and free exchange of

¹⁶¹ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, [2009 SCC 31](#), at para. [78](#); *UALberta Pro-Life v. Governors of the University of Alberta*, [2020 ABCA 1](#), at paras. [171-72](#).

¹⁶² Application Record, Tab 10, Affidavit of Superintendent Matthew Ritchie, p. 113 (para. 16).

¹⁶³ *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, [2018 ABCA 154](#), at para. [71](#).

¹⁶⁴ *Canadian Charter of Rights and Freedoms*, [s. 15](#), Part I of the Constitution Act, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

¹⁶⁵ *Saskatchewan v. Whatcott*, [2013 SCC 11](#), at para. [67](#).

¹⁶⁶ United Nations Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, [Articles 2\(a\), \(e\)](#).

ideas by silencing that group.¹⁶⁷ The Applicants seek protection for speech that does just that. The posters and website expose women who have had abortions, or are considering abortions, to discrimination and/or vilification — which may unacceptably silence their voices.

77. The posters and website expose an unsuspecting public to graphic imagery and messaging that is misleading, gory, and may have damaging psychological effects on women and children visiting Parliament Hill. The limit on the Applicants' free speech is minimal. There is no restriction to their ability to voice their opinions in ways that balance their right to free speech with others' rights to be free of discrimination and to enjoy Parliament Hill. The Applicants' speech cannot be protected in the same way as speech that furthers the goals of s. 2(b). Their speech is misleading, false, and discriminatory. The Rules place a justified limit on this type of speech in order to ensure that Parliament Hill remains a place that all can gather safely, securely, and feel welcome.

PART IV – ADDITIONAL ISSUES RAISED BY THE RESPONDENT

78. The Respondent does not raise any additional issues.

PART IV – ORDER REQUESTED

79. The Respondent asks the Court to dismiss the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September, 2025



Brandon Crawford
Jocelyn Rempel

Counsel for the Respondent

¹⁶⁷ *Saskatchewan v. Whatcott*, [2013 SCC 11](#), at para. [114](#).

SCHEDULE “A”

TABLE OF AUTHORITIES

R. v. Selles, [\[1997\] O.J. No. 2502](#) (C.A.)

R. v. Paul, [\[2002\] O.J. No. 4733](#) (C.A.)

R. v. Gibson, [2021 ONCA 530](#)

R. v. Mathisen, [2008 ONCA 747](#)

Wasylyk v. Simcoe (County), [2023 ONCA 473](#)

Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment), [2023 SCC 31](#)

Nova Scotia (Workers' Compensation Board) v. Martin, [2003 SCC 54](#)

Canada (Minister of Citizenship and Immigration) v. Vavilov, [2019 SCC 65](#)

Dunsmuir v. New Brunswick, [2008 SCC 9](#)

Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City), [2018 ABCA 154](#)

Canadian Centre for Bio-Ethical Reform v. South Coast British Columbia Transportation Authority, [2018 BCCA 344](#)

Greater Vancouver Transportation Authority v. Canadian Federation of Students, [2009 SCC 31](#)

R. v. Ndhlovu, [2022 SCC 38](#)

Alberta v. Hutterian Brethren, [2009 SCC 37](#)

Committee for the Commonwealth of Canada v. Canada, [\[1991\] 1 S.C.R. 139](#)

Saskatchewan v. Whatcott, [2013 SCC 11](#)

R. v. Keegstra, [\[1990\] 3 S.C.R. 697](#)

Winnipeg Child and Family Services (Northwest Area) v. D.F.G., [\[1997\] 3 S.C.R. 925](#)

Canada (AG) v. JTI-Macdonald, [2007 SCC 30](#)

Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City), [2016 ABQB 734](#)

UAlberta Pro-Life v. Governors of the University of Alberta, [2020 ABCA 1](#)

SCHEDULE “B”

RELEVANT STATUTES, REGULATIONS, AND BY-LAWS

Canada Evidence Act, R.S.C., 1985 c. C-5, [s. 31.1](#), [s. 31.6\(1\)](#):

Authentication of electronic documents

31.1 Any person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

Proof by affidavit

31.6 (1) The matters referred to in subsection 31.2(2) and sections 31.3 and 31.5 and in regulations made under section 31.4 may be established by affidavit.

Evidence Act, R.S.O. 1990, C E.23, [34.1\(4\)](#), [34.1\(9\)](#):

Authentication

(4) The person seeking to introduce an electronic record has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

Proof by affidavit

(9) The matters referred to in subsections (6), (7) and (8) may be established by an affidavit given to the best of the deponent’s knowledge and belief.

Judicial Review Procedure Act, R.S.O. 1990, c. J.1, s. [6\(1\)](#), [6\(2\)](#):

Application to Divisional Court

6 (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (1).

Application to judge of Superior Court of Justice

(2) An application for judicial review may be made to the Superior Court of Justice with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice.

Criminal Code, R.S.C., 1985, c.C-46, s. [223\(1\)](#):

When child becomes human being

223 (1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not

- (a) it has breathed;
- (b) it has an independent circulation; or
- (c) the navel string is severed.

Canadian Charter of Rights and Freedoms, [s. 15](#), Part I of the Constitution Act, 1982, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11:

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

United Nations Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, [Articles 2\(a\), \(e\)](#)

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- ...
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise

**ONTARIO SUPERIOR COURT OF JUSTICE
(Ottawa)**

B E T W E E N:

CAMPAIGN LIFE COALITION and MAEVE ROCHE

Applicants

- and -

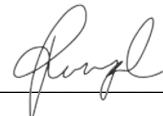
PARLIAMENTARY PROTECTIVE SERVICE

Respondent

CERTIFICATE OF AUTHENTICITY

Rules of Civil Procedure, R.R.O. 1990, Rule 4.06.1

We, Brandon Crawford and Jocelyn Rempel, counsel for the Respondent, certify that we are satisfied as to the authenticity of every authority cited in the factum.



Brandon Crawford (LSO: 66597W)
Jocelyn Rempel (LSO: 82895Q)

EDELSON FOORD LAW



Counsel for the Respondent

**ONTARIO SUPERIOR COURT OF JUSTICE
(Ottawa)**

B E T W E E N:

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RESPONDENT'S FACTUM

**Brandon Crawford (LSO: 66597W)
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