

Court File No.: CV-24-00094951-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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.

APPLICANTS' FACTUM

September 4, 2025

CHARTER ADVOCATES CANADA

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Campaign Life Coalition and Maeve Roche

I. OVERVIEW

1. The Applicants are a pro-life advocacy organization and one of its employees. On May 10, 2023, they held a press conference on Parliament Hill. They intended to display signs with abortion photography during the press conference but were prohibited from doing so by the Respondent, the Parliamentary Protective Service, pursuant to the *General Rules for the Use of Parliament Hill*. The Applicants have brought this application to determine whether the rules governing the content of signs on Parliament Hill, and the Respondent's enforcement of the rules, infringed their right to freedom of expression under s. 2(b) of the *Charter* in a manner that is not justified under s. 1.

2. The impugned provisions of the rules prohibit signs which are obscene, promote hatred or display excessive graphic violence or blood. The prohibitions capture a wide range of material that is often used in advocating for political reform, including, but not limited to pro-life advocacy. Given the central importance of Parliament to Canadian democracy, political expression takes on a particularly high value on Parliament Hill. It is vital that Canadians be free to engage in political expression in that location free from content-based censorship. There is a dearth of evidence to substantiate the claim that the prohibited expression would cause harm, which is the purported justification for the prohibitions. The detrimental effect of the broad prohibitions on the content of expression far exceeds the hypothetical risk identified in the record.

3. The Applicants take no issue with the prohibition of signs which are obscene or promote hatred, so long as "obscenity" and "promotion of hatred" are understood to have the same definition as the criminal offences of the same name. Abortion photography would not be captured by either definition. However, the Respondent's officers relied on vague, overly broad, and subjective definitions of these terms which they then unreasonably applied to the Applicants' signs. Therefore, the Applicants submit that both the rules and their enforcement in this circumstance unjustifiably infringed their right to freedom of expression.

II. FACTUAL BACKGROUND

4. The Applicant, Campaign Life Coalition (“CLC”) is a pro-life organization which works to defend the sanctity of human life and oppose abortion and euthanasia.¹ Every year, CLC organizes the National March for Life (the “**March**”) to protest abortion, euthanasia and assisted suicide by gathering on Parliament Hill and marching through downtown Ottawa. The March is CLC’s largest annual event. It brings together thousands of Canadians to Parliament Hill to urge lawmakers to defend the right to life for all humans from conception until natural death. Among other objectives, CLC advocates for the enactment of legal protections for unborn children.² CLC chooses to gather at Parliament Hill because it is the seat of the level of government responsible for the laws it seeks to change and is generally symbolic of Canadian politics.³

5. The Respondent, the Parliamentary Protective Service (the “PPS”) is responsible for physical security on Parliament Hill. The PPS’s responsibilities include the enforcement of the *General Rules for the Use of Parliament Hill* (the “**Rules**”).⁴ The Rules were first made in 2018 (the “**2018 Rules**”) and then updated on May 3, 2023 (the “**2023 Rules**”). The 2023 Rules were made publicly available on May 9, 2023.⁵ The Rules are drafted by the Committee on the Use of Parliament Hill which derives its authority from the Speakers of the houses of Parliament.⁶

A. The Press Conference

6. In 2023, the March was held on May 11. CLC organized a press conference to take place on Parliament Hill on May 10, the day before the March (the “**Press Conference**”).⁷ During the Press

¹ Application Record (“AR”), Tab 4, Affidavit of Matt Wojciechowski dated February 29th, 2024 (the “**Wojciechowski Affidavit**”) at para. 2.

² *Ibid.* at para. 4.

³ *Ibid.* at para. 5.

⁴ AR, Tab 10, Affidavit of Superintendent Matthew Ritchie sworn February 25, 2025 at para. 4.

⁵ *Ibid.* at para. 8.

⁶ *Ibid.* at paras. 5-6.

⁷ AR Tab 4, Wojciechowski Affidavit at paras. 6-7.

Conference, CLC planned to reveal signs depicting abortion victim photography (the “Signs”).⁸ The Signs show fetuses of various ages and the ages are printed on the Signs. The Applicant, Maeve Roche, is a Youth Coordinator with CLC who planned to hold up one of the Signs.⁹

7. CLC uses abortion photography to persuade others that abortion is morally wrong.¹⁰ CLC uses abortion photography in a manner like past social movements that used graphic imagery in advocacy including the civil rights movement, and the pro-choice movement.¹¹ CLC also uses the Signs in street activism and finds them valuable for initiating dialogue with the public.¹²

8. Before the Press Conference started, a PPS officer, Constable Daniel Trudel, approached CLC personnel and asked to see the Signs. After seeing them, Cst. Trudel prohibited CLC from showing the Signs on Parliament Hill because they were too graphic.¹³ CLC complied and did not show the Signs at the Press Conference. This forced some speakers to adjust their prepared statements accordingly.¹⁴

9. Later that same day, Cst. Trudel emailed CLC an excerpt from the 2018 Rules which provided that “[m]essages that are obscene, offensive, or that promote hatred are prohibited.”¹⁵ The 2023 Rules, which were in force at the time, differed. They provide that “[o]bscene messages or messages that promote hatred or violence are prohibited” and “[s]igns or banners that display explicit graphic violence or blood is prohibited [*sic*].”¹⁶ Cst. Trudel stated in his affidavit that he provided the 2018 Rules to be “fair” to CLC, as he knew they were already familiar with them.

⁸ *Ibid.* at para. 9; AR, Tab 4A, AR p. 27, Photos of signs.

⁹ AR, Tab 5, Affidavit of Maeve Roche sworn February 29, 2024 (the “**Roche Affidavit**”) at para. 5.

¹⁰ AR, Tab 4, Wojciechowski Affidavit at para. 9.

¹¹ *Ibid.* at para. 11.

¹² *Ibid.*; AR, Tab 5, Roche Affidavit at para. 10.

¹³ AR, Tab 4, Wojciechowski Affidavit at paras. 14-15; AR, Tab 11, Affidavit of Cst. Daniel Trudel sworn February 26, 2025 [the “**Trudel Affidavit**”] at paras. 9-11.

¹⁴ AR, Tab 4, Wojciechowski Affidavit at para. 16.

¹⁵ *Ibid.* at para. 17; AR, Tab 4C, p. 52, Email from Officer Trudel, dated May 10, 2023.

¹⁶ AR, Tab 4, Wojciechowski Affidavit at para. 18; AR, Tab, 3D, General Rules for the Use of Parliament Hill dated May 3, 2023, AR p. 62.

Cst. Trudel's position is that the Signs were prohibited under both versions of the Rules.¹⁷

B. Evidence on this Application

10. In response to the Applicants' evidence, the Respondent has adduced the affidavit of Dr. Erin Lovett, an obstetrician/gynecologist who provides abortion procedures as part of her practice.¹⁸ Dr. Lovett stated that she believes the ages indicated on the Signs are not accurate. She opined that the first Sign, which is labelled "8-week" embryo appears to be a 10-week fetus.¹⁹ Similarly, she opined that the second Sign, which is labelled "10-week" appears to be a 14 or 15-week fetus.²⁰ She also opined that the third Sign, labelled "11-week" fetus appears to be a 14 or 15-week fetus.²¹ Dr. Lovett also took issue with the depiction of the fetuses, stating that they are not representative of abortions performed in Canada. She questioned if they were authentic images or had been manipulated in some manner.²²

11. In reply to Dr. Lovett's evidence, the Applicants proffered Dr. Daniel Reilly, an obstetrician/gynecologist. Dr. Reilly's practice includes performing the procedures used for abortions in cases of non-viable pregnancies.²³ Dr. Reilly explained that medical doctors conventionally describe the age of fetuses in the same way they date pregnancies, from the first day of the last menstrual period prior to the pregnancy. This method is called "gestational age."²⁴ By contrast, embryologists date the age of fetuses from the day of fertilization. On average, the gestational age of a fetus will be described as two weeks older than its embryological or fetal age.²⁵

¹⁷ AR, Tab 11, Trudel Affidavit, at para. 14.

¹⁸ AR, Tab 13, Affidavit of Dr. Erin Lovett, sworn April 16, 2025 [the "Lovett Affidavit"] at paras. 1-2, 4.

¹⁹ *Ibid.* at para. 9.

²⁰ *Ibid.* at para. 12.

²¹ *Ibid.* at para. 14.

²² *Ibid.* at paras. 10, 13, 15, 17.

²³ AR, Tab 9, Affidavit of Dr. Daniel Reilly sworn May 6, 2025 [the "Reilly Affidavit"] at paras. 1-5.

²⁴ *Ibid.* at para. 8.

²⁵ *Ibid.*

12. Dr. Reilly was asked to reply to Dr. Lovett's opinions on the age of the fetuses depicted in the Signs, given the assumption that the signs were using fetal age. Dr. Reilly agreed with Dr. Lovett that the first Sign appears to be 10 weeks of gestational age which, when converted to fetal age, would be 8 weeks, as indicated by the Sign.²⁶

13. Regarding the second Sign, Dr. Reilly explained that 10 weeks of fetal age would be 12 weeks of gestational age. He agreed that Dr. Lovett's estimate of 14-15 weeks was within a reasonable range but disagreed that one could reliably rule out the possibility of it being 12 weeks old.²⁷

14. Likewise, for the third Sign, Dr. Reilly explained that 11 weeks of fetal age would mean 13 weeks by gestational age. He agreed that Dr. Lovett's estimate of 14-15 weeks was reasonable but disagreed that the quality and nature of the image permitted one to reliably rule out the possibility that the fetus is at 13 weeks of gestation.²⁸

15. Dr. Reilly further opined that there are medical procedures capable of producing results consistent with the Signs. He explained that the first Sign is consistent with a fetus aborted by sharp dilation and curettage at 10 weeks gestational age.²⁹ Dr. Reilly explained that the second and third Signs do not represent standard abortion procedures but could be the result of a procedure which induces the expulsion of the pregnancy from the uterus.³⁰ Dr. Reilly agreed with Dr. Lovett that the cuts visible in the second and third Signs would not be caused by the abortion procedure *per se* but clarified on re-examination that there are valid medical reasons to cut a fetus after an abortion including to obtain tissue samples.³¹

²⁶ *Ibid.* at para. 10.

²⁷ *Ibid.* at para. 11.

²⁸ *Ibid.* at para. 12.

²⁹ *Ibid.* at para. 15.

³⁰ *Ibid.* at para. 16.

³¹ AR, Tab 22, Cross-Examination of Dr. Reilly at AR p. 502, Qs. 145-49; Re-Examination of Dr. Reilly at AR pp. 509-10, Qs. 180-84.

16. Josephine Luetke also provided evidence in reply to Dr. Lovett. Ms. Luetke is the Director of Education and Advocacy with CLC.³² She explained that CLC’s practice is to use fetal age to communicate the age of embryos and fetuses because it is consistent with CLC’s belief that life begins at conception and avoids possible confusion caused by gestational age.³³ She believes that the Signs were made with the intention of labelling the depicted fetus’ age in fetal age. In any event, regardless of the original intent behind the signs, Ms. Luetke explained that she, and CLC as an organization, always communicate the age of the fetuses depicted in the signs in reference to fetal age.³⁴

17. The Respondent also proffered the affidavit of Dr. Angel Foster as an expert on “sexual and reproductive health social science and public health” to opine on the “impact, if any, of anti-abortion imagery on members of the public.”³⁵ Dr. Foster concluded that “anti-abortion imagery can be deeply upsetting” and “have negative psychological impacts.”³⁶ However, the basis for Dr. Foster’s conclusion is merely a review of complaints received by a third-party organization and a review of academic literature. The Applicants challenge the admissibility of Dr. Foster’s evidence and, if admitted, the weight that can be attributed to it. The Applicant’s challenges are described more fully in the section below.

18. Lastly, the Applicants adduced the affidavit of Nathalia Comrie in reply to Dr. Foster’s affidavit.³⁷ Ms. Comrie explained that she has had an abortion and has been traumatized by it.³⁸

Despite the child being conceived in the context of a sexually abusive relationship, Ms. Comrie

³² AR, Tab 6, Affidavit of Josephine Luetke sworn May 5, 2025 [the “**Luetke Affidavit**”] at paras. 2-3.

³³ *Ibid.* at paras. 6, 8-10.

³⁴ *Ibid.* at para. 7.

³⁵ AR, Tab 14, Affidavit of Dr. Angel Foster sworn April 25, 2025 [the “**Foster Affidavit**”] at para. 12. Note that Dr. Foster was also asked to respond to the affidavit of an expert retained by the Applicants, Dr. Jacqueline Harvey Abernathy. The Applicants have not included Dr. Abernathy’s evidence in their case, and the responding portions of Dr. Foster’s evidence are no longer relevant.

³⁶ *Ibid.* at para. 22.

³⁷ AR, Tab 8, Affidavit of Nathalia Comrie sworn May 6, 2025 [the “**Comrie Affidavit**”] at para. 2.

³⁸ *Ibid.* at paras. 5, 8.

deeply regrets having obtained the abortion.³⁹ She acknowledges that the signs are unpleasant but wishes that she had seen the Signs before obtaining an abortion. She explained that she was not properly informed before obtaining the abortion and believes that seeing the Signs would have benefited her by informing her decision.⁴⁰

III. ISSUES AND ANALYSIS

19. The main issues in this application are 1) whether the Rules infringe s. 2(b) of the *Charter*; 2) if so, whether that infringement is justified under s. 1; 3) whether the PPS' application of the Rules infringed s. 2(b) of the *Charter*; and 4) if so, whether the infringement was justified under s. 1.

20. Before arriving at the main issues, the Applicant raises the following preliminary issues: 1) whether Dr. Foster's expert opinion is admissible; and 2) if it is, whether lettered exhibits attached to her cross-examination have been authenticated and may be made numbered exhibits.

A. Preliminary Issues

i) Dr. Foster's Evidence is not Admissible as Expert Opinion

21. The test for the admissibility of expert opinion evidence has two steps: a four-factor threshold admissibility step and a second discretionary gatekeeping step. At the first step, the four factors are 1) relevance, 2) necessity, 3) absence of an exclusionary rule and 4) the proper qualifications.⁴¹ At the second step, the court "balances the potential risks and benefits of admitting the evidence." The "relevance, reliability and necessity" must outweigh the "consumption of time, prejudice and confusion."⁴² While admissible expert evidence is still subject

³⁹ *Ibid.* at para. 4.

⁴⁰ *Ibid.* at paras. 7-9.

⁴¹ *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015 SCC 23](#) at para. 23.

⁴² *Ibid.* at para. 24.

to scrutiny for weight, “judges must be vigilant to issues...and properly exercise their gatekeeping function at the admissibility stage and not leave it to a question of weight.”⁴³

22. The Applicants do not question the relevance or necessity of Dr. Foster’s evidence. However, Dr. Foster is opining on matters beyond her expertise and bases her opinion on hearsay, which wholly undermines its reliability. It is inadmissible at both stages of the test.

23. First, Dr. Foster opines on psychological harm while lacking the expertise to do so. While Dr. Foster is impressively credentialed, she lacks the specialized expertise to assess psychological harm. It is “legally incorrect” and “wastes both time and resources” to permit experts to give evidence on matters “for which they have no special skill, knowledge or training.”⁴⁴ The Court of Appeal warned that courts “must be vigilant to guard against such impermissible evidence” because:

...trial judges who fail to properly perform their gatekeeper function run the risk of having their decision-making function usurped or severely eroded by “expert generalists” who profess to know something about everything and who are only too willing to provide the court with a ready-made solution for any contentious issue that might exist. The problem with such witnesses is that while they appear knowledgeable and generally come across well, upon closer scrutiny, their opinions may well turn out to be little more than concoctions consisting of guesswork, speculation, commonplace information and junk science, with a hint of valid science thrown in for good measure.⁴⁵

24. The Court of Appeal’s warning is directly applicable to Dr. Foster. The fundamental point of Dr. Foster’s evidence is that graphic anti-abortion imagery can have negative psychological impacts. Dr. Foster does not possess any psychiatric or psychological expertise to enable her to make conclusions about psychological harm.⁴⁶ Assessing psychological harm requires specialized

⁴³ *Fron dall v. Fron dall*, [2020 SKCA 135](#) at para. 38 cit’g *R. v. J.-L.J.*, [2000 SCC 51](#) at para. 28.

⁴⁴ *Johnson v. Milton (Town)*, [2008 ONCA 440](#) at para. 48.

⁴⁵ *Ibid.* at paras. 49-50.

⁴⁶ AR, Tab 20, Cross-Examination of Dr. Angel Foster at AR pp. 401-02, Qs. 3-11.

expertise which is not possessed by general practitioners.⁴⁷ By opining on the psychological impact, Dr. Foster is stepping outside of her expertise. She lacks the proper qualifications to provide this conclusion to the Court and should be excluded at the first step of the test.

25. Second, Dr. Foster's is based on hearsay. She explains in her affidavit that she has not completed research on the impact of abortion photography. Rather, she has merely conducted a "review of international authorities" and "a preliminary review of complaints provided to her" by the group Abortion Rights Coalition Canada (the "ARCC").⁴⁸ The review of authorities and the complaints form the entire basis for Dr. Foster's conclusion.⁴⁹

26. The review of authorities does not include any psychological assessments. In any event, Dr. Foster is not qualified to provide psychological conclusions to the Court. Review of academic literature does not qualify experts to provide expert opinion outside the area of their expertise.⁵⁰ The only other source of information she relied on is the collection of complaints received through the ARCC, which are hearsay and form a biased sample, given their source. Dr. Foster did not meet with the individuals filing complaints or conduct any psychological assessment.⁵¹ The complaints are hearsay and inadmissible for their truth. To the extent that Dr. Foster's opinion relies on them, it is entitled to no weight.⁵² Dr. Foster's conclusion is no more than a summary of the inadmissible complaints. In effect, her opinion evidence merely amounts to an attempt at hearsay laundering by repackaging it in the form of an opinion.

⁴⁷ *R. v. Selles*, [1997 CanLII 1150 \(ON CA\)](#) at p. 24.

⁴⁸ AR, Tab 14, Foster Affidavit at paras. 15-18; Tab 20, Cross-Examination of Dr. Angel Foster at AR pp. 403-04, Q. 22; pp. 405-06, Q. 35.

⁴⁹ AR, Tab 14, Foster Affidavit at para. 22.

⁵⁰ *R. v. Mathisen*, [2008 ONCA 747](#) at para. 126.

⁵¹ AR, Tab 20, Cross-Examination of Dr. Angel Foster at AR pp. 407-08, Q. 40; p. 421, Qs. 87-88.

⁵² *R. v. M.C.*, [2014 ONCA 611](#) at para. 70; *R. v. D.D.*, [2000 SCC 43](#) at para. 55.

27. Dr. Foster's evidence is premised on unreliable and inadmissible material. It is entitled to minimal weight, which fails to outweigh the potential prejudice inherent to expert opinion evidence. Accordingly, it should be excluded.

ii) Exhibit A to Dr. Foster's Cross-Examination is Admissible as a Numbered Exhibit

28. If Dr. Foster's affidavit is found to be admissible, the Applicants request that Exhibit A be made a numbered exhibit. Exhibit A is a printout of an ARCC webpage soliciting complaints related to abortion photography which collected some of the complaints relied on by Dr. Foster.⁵³

29. Section 34.1(4) of the *Evidence Act* requires that electronic records must be authenticated "by evidence capable of supporting a finding that the electronic record is what the person claims it to be."⁵⁴ The provision "confirms the low threshold test at common law for establishing authenticity."⁵⁵ There need only be "some evidence that the item is what it purports to be [emphasis in original]; the "requirement is not onerous and may be established by either or both direct and circumstantial evidence."⁵⁶

30. Exhibit A meets the low threshold for authenticity. Dr. Foster was aware of how ARCC had collected the complaints and was able to recount when it started using the webpage reproduced in Exhibit A.⁵⁷ It is the source of her own research data, and she is capable of authenticating it.

B. The Rules Infringe the Right to Freedom of Expression

31. The test for a s. 2(b) infringement involves three questions: 1) does the matter "have

⁵³ AR, Tab 20, Cross-Examination of Dr. Angel Foster at AR pp. 407-08, Q. 40; Exhibit A, ARCC website page soliciting stories at AR p. 440.

⁵⁴ *Evidence Act*, RSO 1990, c E.23, s. 34.1(4).

⁵⁵ *Lenihan v. Shankar*, 2021 ONSC 330 at para. 217.

⁵⁶ *R. v. C.B.*, 2019 ONCA 380 at para. 66.

⁵⁷ AR, Tab 20, Cross-Examination of Dr. Angel Foster at AR pp. 407-08, Q. 40.

expressive content”?; 2) “if so, does the method or location remove that protection?”; and 3) does the law or government action infringe s. 2(b) protection in either purpose or effect?⁵⁸

32. First, the signs regulated by the Rules have expressive content. To constitute expression, something needs only to convey a meaning.⁵⁹ The relevant portion of the Rules reads:

- Obscene messages or messages that promote hatred or violence are prohibited.
- Signs or banners that display explicit graphic violence or blood is [*sic*] prohibited.⁶⁰

33. Signs and banners necessarily convey meanings and are therefore, expression. The impugned provisions specifically target particular meanings and the way those meanings are expressed.

34. Second, the method and location does not exclude the expression in question. Regarding the method, only violence and threats of violence are excluded, which do not apply to the Signs.

35. Whether a location excludes expression from s. 2(b) protection turns on the “historical or actual function of the place” and “whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.”⁶¹ The grounds in front of legislative bodies “is a place where free expression not only has traditionally occurred, but can be expected to occur in a free and democratic society.”⁶² For example, the Saskatchewan Court of Queen’s Bench (as it then was) found that the legislative grounds “plainly qualifies as a public square” noting that it could “think of no space more worthy of such a characterization.”⁶³ The evidence in this Application confirms these findings. On cross-examination, Supt. Ritchie testified that Parliament Hill sees demonstrations with opposing sides *weekly*.⁶⁴

⁵⁸ *Montréal (City) v. 2952-1366 Québec Inc.*, [2005 SCC 62](#) at para. 56 [*Montreal City*].

⁵⁹ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#), [[1989\] 1 SCR 927](#) at p. 969 [*Irwin Toy*].

⁶⁰ AR, Tab 4A, General Rules for the Use of Parliament Hill at AR pp. 62.

⁶¹ *Montreal City*, *supra* note 58, at para. 74.

⁶² *Bracken v. Fort Erie (Town)*, [2017 ONCA 668](#) at para. 54 [*Bracken*].

⁶³ *Saskatchewan v Durocher*, [2020 SKQB 224](#) at para. 37 [*Durocher*].

⁶⁴ AR, Tab 16, Cross-Examination of Matthew Ritchie, AR p. 353, Qs. 10-11.

36. Third, the purpose of the impugned provisions of the Rules is to limit expression. Where government “restricts the content of expression by singling out particular meanings that are not to be conveyed” its purpose will be to limit free expression.⁶⁵ The Rules single out particular messages and images that cannot be shown. Therefore, the Rules infringe s. 2(b) of the *Charter* and must be justified under s. 1.

C. The Rules’ Limit on Free Expression is Not Justified under Section 1

37. Given that the Rules are an exercise of delegated discretion, the appropriate framework is the *Doré* analysis.⁶⁶ As the Rules infringe s. 2(b) of the *Charter*, the government is required to “proportionately balance the *Charter* protections to ensure they are limited no more than necessary given the applicable statutory objectives.”⁶⁷ To structure the analysis, it should be divided into three inquiries:

- 1) an assessment of the “negative or deleterious effects that the removal recommendation would have on the exercise of the right asserted”;
- 2) an assessment of “the positive effects or benefits of that disposition in terms of the public good” which is the statutory objective; and
- 3) a “proportionality analysis by assessing” for example “whether the disposition is needed to achieve the good sought, or whether the deleterious effects or costs imposed by the disposition are out of proportion to the public good to be achieved.”⁶⁸

⁶⁵ *Irwin Toy*, *supra* note 59, at p. 974.

⁶⁶ *Beaudoin v. British Columbia (Attorney General)*, 2022 BCCA 427 at paras. 255-57; However, the differences between *Doré* and *Oakes* should not affect the outcome because the Rules cannot survive the “robust proportionality review *Doré* requires: *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 at paras. 139-48 [*Lauzon*].

⁶⁷ *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at para. 4 [*Loyola*].

⁶⁸ *Lauzon*, *supra* note 66, at paras. 150-51.

i) The Deleterious Effect of the Rules

38. The negative impact of the Rules' limit on expression is tied to the value of the expression they prohibit. Two factors indicate the particularly high value of speech limited: its purpose and its location.

39. First, as this case demonstrates, the Rules capture political expression. The Supreme Court held that political speech "is the single most important and protected type of expression."⁶⁹ CLC was engaged in political advocacy when it intended to show the Signs (which themselves are a form of political expression).⁷⁰ The Rules' prohibition of "graphic violence or blood" would similarly capture images of war casualties or human rights abuses which would affect political expression unrelated to pro-life advocacy.

40. Second, the location, Parliament Hill, is particularly important for political expression. Parliament Hill is not only the location of the federal legislature, but symbolic of Canadian politics as a whole.⁷¹ It is "paradigmatically a place traditionally used to express public dissent."⁷² If there is any one location in Canada that should be entitled to the free and unfettered exchange of political ideas, it is Parliament Hill. In light of its political nature and the location, the expression limited by the Rules is of uniquely high value and, consequently, the limitation is particularly deleterious. The location also distinguishes this matter from cases such as *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)* which concerned advertising on municipal buses.⁷³

⁶⁹ *Harper v. Canada (Attorney General)*, 2004 SCC 33 at para. 11.

⁷⁰ AR, Tab 4, Wojciechowski Affidavit at paras. 5, 10.

⁷¹ AR, Tab 4, Wojciechowski Affidavit at para. 5.

⁷² *Bracken*, supra note 62 at para. 33; *Durocher*, supra note 63, at para. 37.

⁷³ *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)*, 2018 ABCA 154 at para. 64; note that the Ontario Divisional Court has also rejected the Alberta Court of Appeal's conclusion in *Grande Prairie* because the Court supplemented the decision under review: *Guelph and Area Right to Life v. City of Guelph*, 2022 ONSC 43 at paras. 63-67 [*Guelph*].

41. In ascribing value to the expression, the Court should not attempt to determine its accuracy. While the parties have both called experts to opine on the veracity of the Signs, the Signs' accuracy is not relevant for two reasons. First, the Rules do not prohibit false messages. The Rules prohibit true messages as much as false ones. Second, free expression cannot be limited to expression that is "widely accepted, accurate, or scientifically verifiable."⁷⁴ The Supreme Court has held that even "clear falsification may arguably serve useful social purposes" such as an animal rights advocate who may "knowingly cite false statistics in pursuit of his or her beliefs and with the purpose of communicating a more fundamental message."⁷⁵ Thus, the Court ought not wade into a contentious political and spiritual debate and determine that one side is right or wrong for the purpose of delimiting constitutional protections.

42. In any event, even if the accuracy of the signs were relevant, the evidence on the record is that reasonable experts can disagree. The Applicants submit that Dr. Reilly is thoroughly qualified given that he performs abortion procedures.⁷⁶ He is also the most impartial witness in this matter given that he does not have a determined personal belief about the morality of abortion.⁷⁷ That said, at the very least, the debate between Dr. Reilly and Dr. Lovett reveals that two experts with experience handling aborted fetuses disagree about whether the signs are perfectly accurate. Citizens cannot be expected to only exercise free expression when consensus is reached by experts.

ii) The Objective and Benefit of the Rules

43. The objectives of the Rules relevant to this Application are to "[p]rovide guidance to the public and event organisers so that they may gather in a safe and secure environment to express

⁷⁴ *Lethbridge and District Pro-Life Association v Lethbridge (City)*, [2020 ABQB 654](#) at para. 135, cit'd by *Guelph*, *supra* note 73, at para. 59.

⁷⁵ *R. v. Zundel*, [1992 CanLII 75 \(SCC\)](#), [\[1992\] 2 SCR 731](#) at p. 754

⁷⁶ AR, Tab 9, Reilly Affidavit at para. 5.

⁷⁷ AR, Tab 22, Cross-Examination of Dr. Daniel Reilly at p. AR 475, Q. 4.

their views in peaceful demonstration” and to “[p]reserve Parliament Hill as a safe and dignified space where parliamentarians and other participants in parliamentary business, or those on their way to such business, will not be obstructed.”⁷⁸

44. The benefit of the impugned provisions of the Rules is equal to the harm they are aimed at preventing, i.e. threats to safety. To assign weight to the benefit, the alleged harm must be assessed. Supt. Ritchie described the impugned provisions as ensuring that the public “are not subjected to images that may negatively impact their physical emotional, and psychological safety and security.”⁷⁹ The Applicants submit that there is no reliable evidence of threats to safety in the record and protection against upset or disturbance is not a pressing objective which warrants limiting freedom of expression.

45. First, the concern about harm is not borne out on the evidence. With respect to physical harm, Supt. Ritchie claimed that “the types of messaging captured by the Rules is in part to prevent violent outbreaks by those on opposing sides of a debate” because they could “inflame those tensions to a point of violence.”⁸⁰ However, on cross-examination, Supt. Ritchie testified that the PPS handles demonstrations with opposing elements “weekly” and manages to safely provide separated spaces for both groups by cordoning-off different areas.⁸¹ Given the PPS’s ability to safely maintain separation between opposed groups, the need to limit expression to avoid the risk of outbreak is reduced, if not eliminated.

46. With respect to psychological harm, the only evidence comes from Dr. Foster. As argued above, her evidence ought not to be admitted. However, if it is admitted, for the same reasons argued above, it ought to be ascribed little to no weight. She is not a psychologist or psychiatrist

⁷⁸ AR, Tab 4D, General Rules for the Use of Parliament Hill, dated May 3, 2023 at AR p. 59.

⁷⁹ AR, Tab 10, Ritchie Affidavit at para. 14.

⁸⁰ *Ibid.* at para. 15.

⁸¹ AR, Tab 16, Cross-Examination of Supt. Matthew Ritchie, at AR pp. 353-54, Q. 10-12.

qualified to assess psychological harm. Her only basis for concluding the Signs could cause harm is the biased sample of complaints collected to “get these images banned.”⁸² She never even spoke to the individuals who authored the complaints, rendering a psychological assessment impossible.

47. The only reliable evidence of the impact of abortion photography comes from the Applicant’s witnesses. Ms. Comrie testified that, despite having experienced a traumatic abortion, she does not find the Signs harmful. Rather, she regrets not having seen them earlier in her life.⁸³ Ms. Roche, who has engaged in street activism with the Signs or similar images, testified that, in her experience, children are not generally disturbed by the Signs *per se* but only when influenced by the reactions of their parents.⁸⁴ She testified she has never seen a child appear upset by abortion photography if the parent did not react to the images.⁸⁵ Similarly, Mr. Wojciechowski testified that he has witnessed children, including his own, see abortion photography but he has never seen a child traumatized.⁸⁶

48. With respect to the potential emotional impact of the Signs, upset, disturbance, mere upset or alarm is not a pressing objective warranting the limitation of *Charter* rights. Limits on freedom of expression are only justified where “there are serious reasons to fear harm that is sufficiently specific and cannot be prevented by the discernment and critical judgment of the audience.”⁸⁷ The pluralism and tolerance necessary for a democratic society requires protection of messages that “offend, shock or disturb the State or any sector of the population.”⁸⁸

⁸² AR, Tab 20A, ARCC Website page soliciting stories at AR p. 440.

⁸³ AR, Tab 8, Comrie Affidavit at paras. 4, 7, 9.

⁸⁴ AR, Tab 23, Cross-Examination of Maeve Roche at AR pp. 536-37, Q. 126.

⁸⁵ AR, Tab 23, Re-Examination of Maeve Roche at AR p. 539, Qs. 138-40.

⁸⁶ AR, Tab 24, Re-Examination of Matthew Wojciechowski at AR. Pp 589-90, Qs. 184-87.

⁸⁷ *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 at para. 61 [Ward].

⁸⁸ *Irwin Toy*, *supra* note 59, at p. 969.

iii) Proportional Balancing

49. The Rules disproportionately limit freedom of expression in relation to the tenuous risk of harm identified in the evidence.

50. The Applicants do not object to the Rules' prohibition on the promotion of hatred or obscenity to the extent that those clauses are interpreted consistently with the *Criminal Code* offences of the same name. The Supreme Court has already considered the constitutionality of prohibitions on the promotion of hatred or obscenity and found that those prohibitions are constitutional because they are carefully circumscribed.⁸⁹ The holdings in *Keegstra* and *Butler* relied on the specific meanings attributed to the offences. However, if the Rules are interpreted in a manner that goes astray of the justifications accepted in *Keegstra* and *Butler*, then they will no longer reflect the careful balance struck by the Court in those cases.

51. In the case at bar, Cst. Trudel testified that he understood “obscene” to mean “abhorrent.”⁹⁰ He described “hatred” as “not something that a lot of people would be comfortable seeing.”⁹¹ Cpl. Angeli defined “obscene” as “repulsive, disgusting” and “hatred” as anything that targets or alienates a certain group.⁹² Definitions of this sort are impermissibly vague and overbroad. Indeed, unless obscenity and hatred are tethered to the meanings considered by the Supreme Court, they will expand beyond a narrow meaning that is constitutionally justifiable.

52. The remaining component of the Rules' prohibition – banning “[s]igns or banners that display explicit graphic violence or blood”⁹³ – does not proportionately balance the right to

⁸⁹ *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697 at p. 787; *R. v. Butler*, 1992 CanLII 124 (SCC), [1992] 1 SCR 452 at p. 509.

⁹⁰ AR, Tab 17, Cross-Examination of Cst. Daniel Trudel at AR pp. 363-64, Qs. 24-26.

⁹¹ *Ibid.* at AR pp. 365-66, Qs. 32-33.

⁹² AR, Tab 19, Cross-Examination of Cpl. Lucas Angeli at AR p. 395, Q. 12; p. 396, Q. 14.

⁹³ AR, Tab 4D, General Rules for the Use of Parliament Hill at AR p. 62.

freedom of expression with the objectives of the Rules given the high value of the speech captured and the absence of evidence of harm presented.

53. In *MacKay v. Manitoba*, the Supreme Court cautioned that “*Charter* decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Charter* and inevitably result in ill-considered opinions.”⁹⁴ While the Court was speaking about the burden on applicants alleging *Charter* violations, its warning is equally applicable to the government’s burden in justifying the violations given s. 1’s requirement that justifications be demonstrable.

54. In the absence of reliable evidence about a risk of psychological harm, the Respondent’s justification for the Rules amounts to a concern that onlookers may be upset or disturbed by signs. However, the Court of Appeal has stated “[p]olitical messages are always provocative.”⁹⁵ Even parks are not exempt from this principle. They are not “categorically a ‘safe space’ where people are to be protected from exposure to political messages” because such a finding “is antithetical to a free and democratic society and would set a dangerous precedent.”⁹⁶ *A fortiori*, Parliament Hill must be a place where the public can be expected to tolerate and withstand even disturbing or shocking messages.

55. In *Ward*, the Supreme Court reviewed leading jurisprudence on limits to free expression, both justified and unjustified.⁹⁷ The common theme among justified limits on expression is that they produce specific harmful effects, such as promoting sexually violent behaviour or dehumanizing groups. By contrast, limits were unjustifiable if they were premised on vague concerns of social harm or emotional distress. In the present case, there is no evidence on which

⁹⁴ *Mackay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357 at p. 361.

⁹⁵ *Bracken v. Niagara Parks Police*, 2018 ONCA 261 at para. 93.

⁹⁶ *Ibid.*

⁹⁷ *Ward*, *supra* note 87, at paras. 62, 73.

the Court can reliably conclude that the broad category of images captured by the Rules would cause harm justifying the prohibition. Accordingly, the Rules should be struck down.

D. The Decision of the PPS to forbid the Signs Unjustifiably Infringed Section 2(b)

56. If the Court agrees that the Rules contravened the *Charter*, the PPS's enforcement of those Rules necessarily infringed the *Charter* as well. However, in the alternative, even if the Rules can be justified, the specific interpretation applied by the PPS against the Applicants is unreasonable.

57. For the same reasons that the Rules limited free expression set out in section B of this part of the factum, Cst. Trudel's decision to forbid CLC from displaying the Signs limited the right to free expression. Having engaged a *Charter* protection, the PPS was required to exercise its discretion in a manner that proportionally balanced the Applicants' *Charter* rights.⁹⁸ It did not do so.

58. Both Cpl. Angeli and Cst. Trudel testified that they determined that the Signs were prohibited by the Rules because they were both obscene and promoted hatred.⁹⁹ However, their interpretations of these terms were so broad as to be unreasonably vague. They defined "obscene" as "repulsive, disgusting" and "abhorrent."¹⁰⁰ Cpl. Angeli defined the promotion of hatred as anything that targets or alienates a certain group.¹⁰¹ Cst. Trudel defined it by whether people would be comfortable or "okay" with seeing it.¹⁰² These definitions have no clear boundaries. They essentially amount to an instinctive and subjective evaluation, incapable of objective confirmation. They are also inconsistent with the tolerance for shocking or alarming speech necessary to a free

⁹⁸ *Loyola*, *supra* note 67, at para. 4; *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at para. 66.

⁹⁹ AR, Tab 19, Cross-Examination of Cpl. Lucas Angeli at AR p. 395, Q. 9; Tab 17, Cross-Examination of Cst. Daniel Trudel at AR p. 362, Q. 19.

¹⁰⁰ AR, Tab 19, Cross-Examination of Cpl. Lucas Angeli at AR p. 395, Q. 12; Tab 17, Cross-Examination of Cst. Daniel Trudel at AR pp. 363-64, Qs. 24-26.

¹⁰¹ AR, Tab 19, Cross-Examination of Cpl. Lucas Angeli at AR p. 396, Q. 14.

¹⁰² AR, Tab 17, Cross-Examination of Cst. Daniel Trudel at AR pp. 365-67, Qs. 32-34.

and democratic society and the Rules' own objective of allowing the public to gather and express their views in demonstration.¹⁰³

59. If the PPS' proposed definitions are found to be unreasonable, the decision to prohibit the signs must also be unreasonable. Given that the Applicants' expression was limited unreasonably, their right to freedom of expression was unjustifiably infringed.

IV. ORDER REQUESTED

60. The Applicants request that a declaration that the Rules' prohibitions on the content of "Signs and Banners" unjustifiably infringes s. 2(b) of the *Charter* and is of no force or effect. The Applicant's further request a declaration that the PPS infringed the Applicants' right to freedom of expression by prohibiting them from displaying the Signs on Parliament Hill.

Dated this 4th day of September, 2025



Hatim Kheir

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**Counsel for the Applicants,
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¹⁰³ AR, Tab 4D, General Rules for the Use of Parliament Hill at AR p. 59; *Irwin Toy*, *supra* note 59, at p. 969.

Court File No.: CV-24-00094951-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAMPAIGN LIFE COALITION and MAEVE ROCHE

Applicants

and

PARLIAMENTARY PROTECTIVE SERVICE

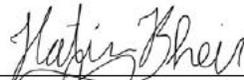
Respondent

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.

CERTIFICATE OF AUTHENTICITY

I, Hatim Kheir, counsel for the Applicants, Campaign Life Coalition and Maeve Roche, certify that I am satisfied as to the authenticity of every authority cited in the factum.

Dated this 4th day of September, 2025



Hatim Kheir

CHARTER ADVOCATES CANADA

Hatim Kheir _____

Christopher Fleury _____

T: _____

E: _____

**Counsel for the Applicants,
Campaign Life Coalition and Maeve Roche**

Schedule “A”
Table of Authorities

<i>AUTHORITY</i>
<i>Beaudoin v. British Columbia (Attorney General)</i> , 2022 BCCA 427
<i>Bracken v. Fort Erie (Town)</i> , 2017 ONCA 668
<i>Bracken v. Niagara Parks Police</i> , 2018 ONCA 261
<i>Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)</i> , 2018 ABCA 154
<i>Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31
<i>Fron dall v. Fron dall</i> , 2020 SKCA 135
<i>Guelph and Area Right to Life v. City of Guelph</i> , 2022 ONSC 43
<i>Harper v. Canada (Attorney General)</i> , 2004 SCC 33
<i>Irwin Toy Ltd. v. Quebec (Attorney General)</i> , 1989 CanLII 87 (SCC) , [1989] 1 SCR 927
<i>Johnson v. Milton (Town)</i> , 2008 ONCA 440
<i>Lauzon v. Ontario (Justices of the Peace Review Council)</i> , 2023 ONCA 425
<i>Lenihan v. Shankar</i> , 2021 ONSC 330
<i>Lethbridge and District Pro-Life Association v Lethbridge (City)</i> , 2020 ABQB 654
<i>Loyola High School v. Quebec (Attorney General)</i> , 2015 SCC 12
<i>Mackay v. Manitoba</i> , 1989 CanLII 26 (SCC) , [1989] 2 SCR 357
<i>Montréal (City) v. 2952-1366 Québec Inc.</i> , 2005 SCC 62
<i>R. v. Butler</i> , 1992 CanLII 124 (SCC) , [1992] 1 SCR 452
<i>R. v. C.B.</i> , 2019 ONCA 380
<i>R. v. D.D.</i> , 2000 SCC 43
<i>R. v. Keegstra</i> , 1990 CanLII 24 (SCC) , [1990] 3 SCR 697
<i>R. v. M.C.</i> , 2014 ONCA 611
<i>R. v. Mathisen</i> , 2008 ONCA 747
<i>R. v. Selles</i> , 1997 CanLII 1150 (ON CA)
<i>R. v. Zundel</i> , 1992 CanLII 75 (SCC) , [1992] 2 SCR 731
<i>Saskatchewan v Durocher</i> , 2020 SKQB 224
<i>Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)</i> , 2021 SCC 43
<i>White Burgess Langille Inman v. Abbott and Haliburton Co.</i> , 2015 SCC 23

Schedule “B”
Relevant Statutes, Regulations and by-laws

Evidence Act
R.S.O. 1990, CHAPTER E.23

Consolidation Period: From March 6, 2024 to the e-Laws currency date.
Last amendment: [2024, c. 2](#), Sched. 19, s. 6.

Authentication

34.1 (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. 1999, c. 12, Sched. B, s. 7 (2).

**CAMPAIGN LIFE COALITION ET AL.
APPLICANT**

-and-

**PARLIAMENTARY PROTECTIVE SERVICE
RESPONDENT**

Court File No.: CV-24-00094951-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding Commenced at OTTAWA

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