

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

(Appellant)

- and -

JOHN WILSON AND MARY FERNANDES AND SUZAN SIMPSON AND MARLYS JONES

(Respondents)

RESPONDENT'S FACTUM

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PART I: INTRODUCTION

1. This case is about the rights of the parents, John Wilson, Mary Fernandes, Suzan Simpson, Marlys Jones and their children, Harrison and Rashida, being infringed upon by The *Protecting Ontarians Against Bigpox Act*, S.O. 2015 c. 13 (*POABA*) being enforced upon their children via a bigpox vaccine.
2. The Respondents concur with the lower court's decision that Justice Mezody ruled that the *POABA* violates both party's *Canadian Charter of Rights and Freedoms* sections 2(a) as it goes against the parent's freedom of conscience, along with their section 7 right to life, liberty and security of the person as outlined in the *Charter*.
3. However, the Respondents find that Justice Mezody did err in his decision that the *POABA* does not violate the parent's and their children's section 15 equality rights of the *Charter*.
4. The Respondents concur with Justice Mezody's decision that the *POABA* does not justify a limitation on a person's *Charter rights* and therefore, cannot be saved by The Reasonable Limits Clause as outlined in section 1 of the *Charter*.

PART II: SUMMARY OF THE FACTS

5. In fall 2013, a new disease, variolous humungous (commonly called "bigpox"), was first identified in the United Kingdom.
6. If left untreated (or if the patient is resistant to treatment), bigpox will eventually attack the lungs; in its most extreme cases, bigpox can lead to paralysis of the lungs, leading

to death. During its initial outbreak in the United Kingdom, of 3,291 persons diagnosed with bigpox, 31 died and a further 479 people have ongoing respiratory problems due to lung damage suffered as a result of bigpox.

7. In March 2014, a bigpox outbreak occurred in Petrolia, Ontario. By the time the outbreak was declared contained three weeks later, 67 people had been diagnosed with bigpox. Sadly, four people died, including a seven-year old boy, a three-year old girl, her 81 year old grandmother, and a 34-year old nurse.
8. A bigpox vaccine was developed in November 2014. By February 2015, the vaccine was being used in areas that had been affected by bigpox outbreaks; by July 2015, the bigpox vaccine was in mass production and could be made available to all persons in Canada.
9. There have been no confirmed cases of bigpox in Ontario since August 12, 2015. World-wide, the incidence of bigpox has plummeted since the vaccine was introduced in 2015.
10. The *Protecting Ontarians Against Bigpox Act*, S.O. 2015 c. 13 (*POABA*), was enacted by the Ontario legislature in 2015. The *POABA* requires that any child who attends a school or a day-care centre in Ontario must have been vaccinated against bigpox. While the *POABA* provides an exemption for children who are unable to take the bigpox vaccine because of a medical condition, there is no exemption for children (or their parents) who object to taking the vaccine for any other reason.
11. The original applicants chose not to vaccinate their children against bigpox for different reasons. Mary Fernandes and John Wilson decided not to have their four-year-old daughter, Rashida, vaccinated because they are concerned that the aluminum adjunct in the vaccine may have a detrimental impact on Rashida's brain development. Suzan Simpson and Marlys Jones are practicing vegans who are raising their son, Harrison, as a vegan. Vegans do not consume any sort of animal product. They decided not have their two-year-old son, Harrison, receive the bigpox vaccine because it contains a

compound isolated from sheep blood. Because Rashida and Harrison have not received the bigpox vaccine, and because they do not fall within the medical exemption found within the *POABA*, each of them has been barred from registering for, and attending day-care (Harrison) and school (Rashida).

12. These families brought an application against the Attorney General of Ontario, seeking declarations that:

(i) the *POABA* infringes section 2(a) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") because it violates parents' (and their children's) rights to freedom of religion and freedom of conscience;

(ii) the *POABA* infringes section 15(1) of the *Charter* because it discriminates against parents (and their children) based on their religious or conscientious beliefs;

(iii) the *POABA* infringes section 7 of the *Charter* because it deprives parents of liberty and security of the person in a manner not in accordance with the principles of fundamental justice; and

(iv) the violations of ss. 2(a), 15(1) and 7 of the *Charter* cannot be demonstrably justified under s. 1 of the *Charter* and the offending sections of the *POABA* are therefore of no force and effect.

13. Justice Mezody agrees with the Respondent in three of the four *Charter* sections challenged in this case. Justice Mezody finds that the *POABA* violates section 2(a), which is the freedom of conscience and religion, section 7, which is the right to life, liberty and security of the person and that the *POABA* fails to satisfy the Oakes test, which sets reasonable limits to *Charter* rights in section 1. Where the trial judge differs from we the Respondents is in section 15(1) of the *Charter* equality rights.

PART III GROUNDS OF APPEAL

ISSUE ONE: DOES THE *POABA* INFRINGE SECTION 2(A) OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* (THE “*CHARTER*”) BECAUSE IT VIOLATES PARENTS’ (AND THEIR CHILDREN’S) RIGHTS TO FREEDOM OF RELIGION AND FREEDOM OF CONSCIENCE?

14. The Respondents agree with Justice Mezody’s decision that the *POABA* does violate John Wilson, Mary Fernandes, Suzan Simpson, Marlys Jones and their children’s fundamental freedoms under s 2(a) of the *Canadian Charter of Rights and Freedoms*.

15. Section 2(a) of the *Canadian Charter of Rights and Freedoms* provides: “everyone has the following fundamental freedoms: (a) freedom of conscience and religion.”

Canadian Charter of Rights and Freedoms, s 2(a), Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.

16. Under s 2(a), the Supreme Court of Canada set out a two-part test to determine whether a person’s right to freedom of religion has been violated, highlighted in the Supreme Court of Canada decision in the case of *Multani v. Commission scolaire Marguerite-Bourgeoys*:

- 1. That he or she sincerely believes in the practice or belief that has a connection with religion and;**
- 2. That his or her ability with the practice or religious belief is being interfered with.**

Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6, at paras 154-155.

We the Respondents have utilized this legal test to support our argument for freedom of consciousness, as an extension of freedom of religion; to be applied in the subsequent paragraphs.

Part 1: That he or she sincerely believes in the practice or belief that has a connection with religion.

17. As stated in Justice Mezody's reason for the decision, Suzan Simpson and Marlys Jones are practicing vegans who do not eat, wear or consume animal products of any kind. Their lifestyle is based on their moral and ethical beliefs against animal cruelty and of concern for the environment. Due to their moral belief, they have chosen to raise their son, Harrison, as vegan.

Reasons for Judgement, at para 21.

18. As stated in Justice Mezody's reason for the decision, John Wilson and Mary Fernandes have chosen not to vaccinate their child, Rashida, due to the aluminum the vaccine contains. Mary Fernandes, a biologist, has done research on the Big Pox vaccine and does not feel comfortable vaccinating Rashida due to the content of aluminum potassium sulfate, as they have also researched the affect aluminum has on early brain development.

Reasons for Judgement, at para 20.

19. The Respondents submit that the test for freedom of conscience should be the same as the two-part test outlined in the case of *Multani v. Commission scolaire Marguerite-Bourgeoys*. Veganism is not a religion, but their lifestyle is based on a set of moral beliefs and practices, much like a religious belief which is based mainly on morals as opposed to facts. The Respondents concur with Justice Mezody's decision that these findings should apply equally to a belief system or a system of morals, Justice Mezody made a statement on freedom of conscience by stating Section 2(a)'s reference to "freedom of conscience" protects systems of belief which are not theocentric and which might not be characterized as religions for that reason.

Reasons for Judgement, at para 35.

20. In the case of *Maurice v Canada*, Justice Campbell stated that vegetarianism is a dietary choice, which is founded on the belief that consumption of animal products is morally wrong. He realized that motivation for practicing vegetarianism may vary, but its underlying belief system should fall under an expression of conscience.

Maurice v. Canada, 2002 FCT 69, at para 9.

21. The Supreme Court of Canada cannot hold a person's conscience to a different standard from religion. Canada is a secular nation with no established religion. Thus, the court must consider freedom of conscience and religion to the same degree.

22. Since both parents fit the criteria of sincerely believing in their practice, they therefore pass the first part of the two-part test.

Part 2: That his or her ability with the practice or religious belief is being interfered with.

23. Suzan Simpson and Marlys Jones are practicing vegans and have chosen to raise their son as vegan. Since the vaccine contains sheep blood, it goes against their moral conscience as vegans since they chose to live their life without the consumption of animal products.

Reasons for Judgement, at para 21.

24. Justice Dickson defined a free society stating that "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct." In this case, "Wide variety of beliefs" can be applied to Suzan Simpson's and Marlys Jones's moral beliefs through the practice of veganism.

R. v. Big M Drug Mart. [1985] 1 SCR 295, at page 336.

25. The Supreme Court of Canada has held that the right of parents to raise their children according to their religious beliefs is a fundamental aspect of freedom of religion, guaranteed by s 2(a) of the *Charter*. Justice Mezody recognized that this would include decisions regarding their children's medical and other treatments. Thus, since Mary Fernandes and John Wilson do not feel consciously comfortable with vaccinating their child, it is within their *Charter* Rights to object to the vaccination.

Reasons for Judgement, at para 34.

26. Although the *POABA* does not directly force parents to vaccinate their children, the Respondents do agree with Justice Mezody's decision that the *POABA* amounts to practical compulsion against the parent's conscience. Schools and day cares play a fundamental role in a child's social and cognitive development; being barred from these institutions will result in social isolation, stigma and educational deprivation for children and added expense and strain on their parents.

Reasons for the Judgement, at para 33.

27. As identified in the *R. v Big M Drug Mart Case*, Freedom has been described as "the absence of coercion and constraint". Thus, because the *POABA* does amount to practical compulsion against their conscience, it therefore violates their s 2(a) *Charter* Rights by forcing John Wilson, Mary Fernandes, Suzan Simpson, and Marlys Jones to go against their conscience beliefs as a parent.

R. v. Big M Drug Mart. [1985] 1 SCR 295, at page 336.

28. Therefore, since John Wilson, Mary Fernandes, Suzan Simpson, and Marlys Jones sincerely believe that they are making conscientious decision regarding their children's health, and because the *POABA* does result in practical compulsion, it is apparent that their s 2(a) *Charter* Rights have been violated.

ISSUE TWO: DOES THE *POABA* INFRINGE SECTION 15(1) OF THE *CHARTER* BECAUSE IT DISCRIMINATES AGAINST PARENTS (AND THEIR CHILDREN) BASED ON THEIR RELIGIOUS OR CONSCIENTIOUS BELIEFS?

29. Section 15(1) of the *Charter* deals with equality rights, it protects individuals against discrimination. This section ensures that everyone is treated as equals. It states:

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.

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

30. In *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483, at para. 17, the Supreme Court of Canada set out a two-part test for assessing a claim under s. 15(1) of the *Charter*:

- 1) Does the law create a distinction based on an enumerated or analogous ground?**
- 2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?**

R. v. Kapp, 2008 SCC 41, at para 17.

31. The Supreme Court subsequently affirmed this test in *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396, at para. 30.

Part 1: Does the law create a distinction based on an enumerated or analogous ground?

32. Although the Respondents are not being discriminated based on an enumerated ground from the *Charter*, they are being discriminated based on their conscience, which is an analogous ground to religion. In section 2(a) of the *Canadian Charter of Rights and*

Freedoms, the freedom of religion and freedom of conscience are included together, this shows that the government sees these freedoms as equal in the eyes of the law, and should they not distinguish between the two now in section 15. We the Respondent do not agree with Justice Mezody's decision that the analogous grounds are not a necessary in this case, as they are an equal part of the test.

Canadian Charter of Rights and Freedoms, 1982 s2.

33. The separation between religion and conscience is that religion comes from a spiritual authority whereas the conscience comes from moral authority; Justice Mezody found that the beliefs of the Respondents are sincere and are genuine driving factors of their lives. The vegan lifestyle is not limited to what they consume but it also deals with specific beliefs and philosophies. The beliefs of science are also valid and they should be able to govern their lives as they see fit to their conscience.

Reasons for Judgement, at para 3.

Part 2: Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

34. In paragraph 40 of the Justice Mezody's decision the judge states that they agree with the Appellant, and that "I find that the applicants [the parents] have failed to satisfy the second part of the Kapp-Withler test."

Reasons for Judgement, at para 40.

35. The second part of the Kapp test is to see if there is a disadvantage created by the prejudice or stereotyping that is occurring from the law. The *POABA* creates an immense disadvantage for the children in this case. As stated by Justice Mezody; "the disadvantage suffered by the applicants is the denial of access to important institutions for their children:

school and day-care. While I recognize that these institutions play a critical role in children's lives." Children's involvement in these institutions is vital to for them to become fully functional members of society and develop both the mental and social skills these institutions provide. In the judgement, the trial judge does find that barring children from daycares and schools creates a stigmatism around them.

Reasons for Judgement, at para 43.

36. Section 15(1) of the *Charter* has been put into place by the government to avoid certain groups being targeted and perpetuating prejudice onto these groups. As "stigma" is defined as a mark of disgrace associated with a particular circumstance or quality, this being a negative connotation and exactly as "prejudicial attitude."

Canadian Charter of Rights and Freedoms, 1982 s15.

37. Forcing these children to be homeschool based on their parent's moral values and conscience is against the section 15(1) *Charter* rights that must be awarded to every Canadian citizen and with the negative connotation being placed on the Respondents, it should be clear that they are being discriminated against and their section 15(1) rights are being violated by the *POABA*.

Canadian Charter of Rights and Freedoms, 1982 s15.

ISSUE THREE: DOES THE *POABA* INFRINGE SECTION 7 OF THE *CHARTER* BECAUSE IT DEPRIVES PARENTS OF LIBERTY AND SECURITY OF THE PERSON IN A MANNER NOT IN ACCORDANCE WITH THE PRINCIPLES OF FUNDAMENTAL JUSTICE?

38. Section 7 of the *Charter* of Rights and Freedoms provides that “everyone has the right to life, liberty and security of the person and the right to not be deprived thereof except in accordance with the principles of fundamental justice.”

Canadian Charter of Rights and Freedoms, s 7, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* (UK), 1982, c 11.

39. The Respondent strongly agrees with what Justice Mezody determined in his decision, stating, “Applying these principles to this case, I find that the *POABA* violates the principle of overbreadth and it is grossly disproportionate.”

Reasons for Judgment, at para 55.

40. Two legal questions that must be asked derived from the *R. v. Bedford* (2013) case:

Part 1: Has there been a corresponding deprivation of the claimant’s life, liberty, and/or security of the person?

Part 2: If the claimant experienced a deprivation of their s.7 rights, was the deprivation justified in accordance with the principles of fundamental justice?

R. v. Bedford, 2013 SCC 72.

Part 1: Has there been a corresponding deprivation of the claimant’s life, liberty, and/or security of the person?

41. Justice Mezody in his decision stated that one has “parental liberty” to their child that extends to matters such as decisions about their child’s medical care and the right to educate their children as they see fit.

Reasons for Judgment, at para 47.

42. The right to security states that an individual has a “personal autonomy involving control over one’s bodily integrity free from state interference.”

Reasons for Judgment, at para 48.

43. The most analogous precedent to the instant case is *B. (R.) v. Children’s Aid Society of Metropolitan Toronto* (1994). In that case, the SCC rules in favor of Jehovah’s Witnesses who refused to consent to a blood transfusion for their child. In the words of La Forest J., “the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent.” It does not matter that the parents (rather than the children) are the applicants in this proceeding. Their rights, just as their child’s, have been infringed.

Reasons for Judgment, at para 48.

44. The ability of a parent to make decisions regarding his or her child can interfere with the psychological integrity of the parent, involving stigmatization, loss of privacy, stress, anxiety and disruption of family life and therefore engages the parent’s security of the person: *New Brunswick (Minister of Health and Community Services) v. G (J.)*, [1999] 3 S.C.R. 46; *Winnipeg Child and Family Services (Central Area) v. W. (K.L.)*, [2000] 2 S.C.R.R 519.

Reasons for Judgment, at para 48.

2. If the claimant experienced a deprivation of their s.7 rights, was the deprivation justified in accordance with the principles of fundamental justice?

45. According to Justice Medozy “the *POABA* violates two settled principles of fundamental justice: overbreadth and gross disproportionality.”

Reasons for Judgment, at para 50.

46. “Overbreadth is violated when a law is so broad in scope that it includes some conduct that bear n relation to its purpose; the law is rationally connected in some of its applicants, but goes too far, affecting s.7 rights in other situations, where there is no rational connection to the laws purpose: *Bedford v. Canada (Attorney General)*, 2013 SCC 72, [2013] 3 S.C.R. 1101 (QL), at para. 112.

Reasons for Judgment, at para 52.

47. On the issue of overbreadth, the Respondents submit the statistics provided by Justice Mezody. For example, while herd immunity is reached at 65% immunization, and approximately 33.6% of the population cannot get vaccinated, there is no evidence that the particular communities in which the claimants live have not already reached 65% immunization.

Reasons for Judgment, at para 52.

48. On the issue of gross disproportionality, the Respondents believe that there are negative effects of the *POABA*. Since the Respondents are being stigmatized by the *POABA*. Their children are being denied access to institutions that are critical to their social, psychical, economic, and cognitive well-being and development. The benefits of the *POABA* are minimal. For example, while the statute was enacted to prevent bigpox outbreaks, the interest of s.7 is “totally out of sync” with its objective: *Bedford*, at paras. 120-121.

Reasons for Judgment, at para 52.

49. Justice Medozy notes that the third principle of fundamental justice is arbitrariness and he finds that the deprivation of the Applicant’s liberty and security of a persons interest –namely,

depriving their children access to schools and day-cares because they have chosen not to have them vaccinated—is rationally connected to the laws purpose.

Reasons for Judgment, at para 53.

50. Justice Medozy does come to the conclusion that banning all voluntarily unvaccinated children, whether or not they have exhibited any bigpox symptoms goes too far because it stop children from being about to attend schools or day-cares which can cause suffering to their psychological well-being.

51. Therefore, we the Respondents submit that like Justice Medozy concludes, there is no evidence that uninfected, unvaccinated children pose a bigpox threat to others. By targeting uninfected rather than infected children, the *POABA* unnecessarily curtails the liberty interests of many Ontarians.

ISSUE FOUR: IF ANY INFRINGEMENT IS FOUND WITH RESPECT TO SS. 2(A), 15(1) OR 7, IS SUCH INFRINGEMENT JUSTIFIED UNDER S. 1 OF THE *CHARTER*?

52. Section 1 of the *Canadian Charter of Rights and Freedoms*, enacted in 1982, guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Canadian Charter of Rights and Freedoms, s 1, Part I of the *Constitution Act*, 1982, being
Schedule B to the *Canada Act* (UK), 1982, c11.

53. Before looking at the specifics of section 1, general facts of this case must be made. In fall 2013, variolous humungous, commonly known as bigpox, was a new disease first identified in the United Kingdom. This virus attacks the respiratory and central nervous systems. In extreme cases, bigpox can lead to paralysis of the lungs, leading to death. There have been

no confirmed cases of bigpox in Ontario since August 12, 2015. World-wide, the incident of bigpox has plummeted since the vaccine was introduced in 2015.

Reasons for Judgement, at paras 6-7, 9, 12.

54. According to Section 1 of the *Charter*, the right must be prescribed by law. This means that the limitations must be legal, and in part of a law, statute or regulation that is within the jurisdiction of the level of government that passed it. The provisions of the *POABA* are "prescribed by law" because they are duly enacted legislative provisions.

55. *The Protecting Ontarian Against Bigpox Act (POABA)* was enacted by the Ontario legislature in 2015 following an outbreak of a new and, in some cases, deadly disease "bigpox" in the town of Petrolia, Ontario in spring 2014. The *POABA* requires that any child who attends a school or day-care centre in Ontario must have been vaccinated against bigpox. While the *POABA* provides an exemption for children who are unable to take the bigpox vaccine because of medical reasons, there is no exemption for children (or their parents) who object to taking the vaccine for any other reason.

Reasons for Judgement, at para 59.

56. Section 1 of the *Charter* is also referred to as the "reasonable limits clause." It can be used to justify a limitation on a person's *Charter* rights. These rights can be infringed upon since they are not absolute but must be determined if the courts consider it reasonable.

Canadian Charter of Rights and Freedoms, 1982 s 1.

57. *Charter* issues are decided in the ordinary course of litigation. Any person whose *Charter* rights are impacted is entitled to raise a constitutional issue in a civil proceeding or as a defence to a criminal proceeding.

58. *R. v. Oakes*, [1986] 1 S.C.R. 103, is the case in which the two-stage test for 'reasonable limits' was established by the Supreme Court and is summarized into what is followed:

Stage 1: Does the *POABA* have a pressing and substantial objective?

Proportionality Test:

Stage 2: a) Are the means chosen by the legislature in the *POABA* rationally connected to the objective of preventing the spread of bigpox?

b) Does the *POABA* minimally impair the applicants' rights?

c) Are the positive effects of the *POABA* proportional to its negative effects?

R. v. Oakes, [1986] 1 S.C.R. 103.

Stage 1: Is the purpose of the law pressing and substantial?

59. The purpose of the law must be important to society. The purpose of the *POABA* is to protect the health of people in Ontario schools and day cares, by preventing the spread of bigpox, is a pressing and substantial objective.

Reasons for Judgement, at para 61.

Proportionality Test

60. Proportionality refers to whether the government has chosen proportional, or relative, ways to achieve those objectives. The government has to find reasonable ways to achieve or implement its legislation. This analysis has three sub-steps in the *Oakes* test.

Stage 2: A). Is the law rationally connected to its purpose?

61. The limitation of the right must be rationally connected to the objective of the law in question. Any limitation to a *Charter* right cannot be arbitrary, or unconnected to the purpose of the law.

62. Alongside stage one; it can be showcased how the purpose of the *POABA* is simply to protect the health of people in Ontario. It is specifically geared towards the children who attend Ontario schools and day-cares. The impact of the 2014 outbreak Petrolia, Ontario demonstrates the devastating toll that Bigpox can have a community once infection takes hold. Therefore, there is a rational connection between the *POABA* and the government's pressing and substantial objective of protecting the public from Bigpox.

Reasons for Judgement, at para 62.

B). Does the law minimally impair the infringed right?

63. In order for a government action that infringes *Charter* rights to be justifiable, the *Charter* right must be impaired as little as possible. If the government can achieve its legislative objective in a way that involves less impairment of a right, it must do so.

64. The *POABA* does meet the minimal impairment test; since the *POABA* prohibits all children who have not received the bigpox vaccine from attending a school or day-care. Everyone being vaccinated, without evidence that bigpox was still an issue, was not minimally impairing. Schools or day-cares have already reached satisfactory levels of vaccination. In any event, those statistics show that, under the current regime, there is a 66.3% effective vaccination rate - which is greater than the 65% necessary to maintain "herd immunity."

Reasons for Judgement, at para 63.

C). Do the positive effects of the law outweigh the negative effects of the infringement?

65. This part of the Oakes test is concerned with the overall benefits and effects of the law in question. Here, courts seek to balance the negative effects of any limitation of a right with the positive effects that the law may have on society as a whole.

66. The *POABA* clearly does not meet the requirement of minimal impairment for the reasons set below. The *POABA* prohibits entry to all children who have not been vaccinated from attending school or day-care. It is mandatory whatever the case may be. There has not been a confirmed case of bigpox in Ontario since August 2015, over 2 years ago. A permanent ban on children attending schools or day-care because they have not received the bigpox vaccine, in the absence of any indication that bigpox remains a threat within their community, is unjustifiable. Forcing them to violate their own beliefs is a serious matter - equal with the public health goals promoted by the *POABA*.

R. v *Oakes*, 1986 S.C.R. 103, at para 64.

67. Therefore, the Respondents fully agree with the decision of Justice Mezody.

APPLICATION TO THIS CASE

68. In conclusion, the Respondents believe that based on both case law and the *Canadian Charter of Rights and Freedoms*, this appeal should be dismissed and the children in this case should be allowed access to the vital institutions that are Day-Care and School. The barring of these children is unconstitutional and unlawfully denies them a multitude of rights that all Canadians should receive regardless of their moral beliefs.

PART IV
ORDER REQUESTED

69. It is respectfully requested that the appeal be dismissed.

ALL OF WHICH is respectfully submitted by
Jennie O'Brien, Madalyn Morrison, Joshua Sebastian and Claudia Reyes
Of Counsel for the Respondent
DATED AT HAMILTON on this 20th Day of November 2017.

APPENDIX A

AUTHORITIES TO BE CITED

STATUTE

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

JURISPRUDENCE

Canada (AG) v. Bedford, 2013 SCC 72.

Maurice v. Canada, 2002 FCT 69.

Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6.

R. v. Big M Drug Mart, [1985] 1 SCR 295.

R. v. Kapp, 2008 SCC 41.

R. v. Oakes, [1986] 1 S.C.R. 103.

CHARTER CHALLENGE SOURCE

A.G. (Ontario) v Wilson et al (2017).