

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

BETWEEN:

LAW SOCIETY OF ONTARIO

Applicant

- and -

A.A.

Respondent

**FACTUM OF THE INTERVENER
JUSTICE FOR CHILDREN AND YOUTH**

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PART I – OVERVIEW

1. AA is a proposed licensee who sexually abused young children, is diagnosed with pedophilia in remission, and until 2017 demonstrated dishonesty. The Law Society Tribunal Hearing Division,¹ and the Law Society Tribunal Appeal Division,² (“the Decisions”) decided that AA, is of good character and should be licensed to practice law, but should have a restriction placed on his license that he must not “meet with minor children while unsupervised.”

2. A decision that involves the interests and rights of children will be patently unreasonable unless the reasons meaningfully address the best interests of children as a primary consideration. In this case, the reasons are insufficient because they failed to: demonstrate clear respect for the right of children to be treated as equal members of the public; to ensure that children are protected from harm in robust ways that support their equitable inclusion in society; and, identify how the best interests of children are safeguarded. In this case, the analysis must be consistent with legal and societal opprobrium of sexual molestation of young children. Fundamentally, practicing law is a privilege that cannot override children’s rights as articulated by domestic law and the *United Nations Convention on the Rights of the Child* (“UNCRC”).³

3. The insufficiency of reasons renders the Decisions unreasonable on any standard, both regarding licensure and regarding the practice restriction.

PART II – FACTS

4. JFCY accepts and adopts the facts as set out by the Applicant. JFCY relies on the findings of the Tribunals below as follows:

¹ *AA v Law Society of Ontario*, 2023 ONLSTH 99 [Hearing Division]

² *AA v Law Society of Ontario*, 2024 ONLSTA 6 [Appeal Division]

³ United Nations, *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3. at art 3 [UNCRC]

- a. In 2009, AA sexually abused three children, all around age five, including one of his own children. AA also accessed and used child pornography, and public masturbation.⁴ He began to take medication to curb his sexual dysfunction.⁵ AA was prescribed another medication to curb his dysfunction in Canada and discontinued this medication in 2016.⁶
 - b. AA has a history of behaving dishonestly. He did not disclose the child sexual abuse to the Law Society (“LSO”). He minimized his sexual abuse to treating medical professionals and the local child protection agency.⁷
 - c. AA has the diagnosis of pedophilic disorder in remission. AA’s expert psychiatrist recommended that he: (a) attend therapy in a group setting; (b) should not be unsupervised around women or children; (c) have people around him who are aware of his circumstances and challenges; and (d) would always have to remain vigilant against recidivism.⁸
 - d. AA has been investigated by a child protection agency abroad and in Ontario, and has had a restriction against being unsupervised when in the presence of any children, including his own children, since 2009. This ongoing restriction remained in place for over a decade.⁹
 - e. AA wants to focus on representing marginalized populations.¹⁰
5. According to the Decisions, the restriction was imposed to enhance public confidence in the regulation of lawyers and paralegals,¹¹ and “is intended to provide and will have the effect of providing extra protection to children, a vulnerable and disadvantaged group.”¹²

⁴ *Hearing Division, supra* note 1 at [para 8](#)

⁵ *Ibid* at [para 9](#)

⁶ *Appeal Division, supra* note 2 at [para 52](#)

⁷ *Hearing Division, supra* note 1 at [paras 12, 16-17](#)

⁸ *Ibid* at [paras 47, 49](#)

⁹ *Ibid* at [paras 9, 13](#)

¹⁰ *Ibid* at [para 43](#)

¹¹ *Hearing Division, supra* note 1 at [para 80](#)

¹² *Appeal Division, supra* note 2 at [para 103](#)

PART III – ISSUES

6. The issue on this Judicial Review is whether the Tribunals’ erred in finding the applicant AA to be of good character, and granting him a license to practice law with the restrictive condition that he “not meet with minor children while unsupervised.” The Decisions are unreasonable on both aspects because they failed to interpret the LSO’s core public interest mandate through a required best interest of the child analysis, and from the vantage point of children as members of the public whose interests are to be protected. The Decisions failed to conduct a proper best interests of children analysis in that they: (i) fail to uphold the dignity and equity rights of children, and (ii) do not adequately protect children as vulnerable members of the public.

7. If this Court finds that a practice restriction is the appropriate response to AA’s application for licensure, the practice restriction imposed by the Tribunals below is wholly inadequate to do the kind of protective work it purports to do.

PART IV – STATEMENT OF LAW

A. **Children are Members of the Public – Equal to All Other Groups - Who Engage with Legal Services and the Justice System**

8. The analysis of the reasonableness of the Decisions begins with the framework set out in section 4.2 of the *Law Society Act*, that that the LSO has a duty to (a) maintain and advance the cause of justice and the rule of law; (b) act so as to facilitate access to justice for the people of Ontario; and (c) protect the public interest.¹³ These duties must be viewed in line with the Supreme Court’s articulation that the Law Society “has an overarching interest in protecting the values of equality and human rights in carrying out its functions.”¹⁴

¹³ *Law Society Act*, RSO 1990, c L.8, s 4.2

¹⁴ *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 at [para 21](#) citing *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at [para 47](#)

9. An aspect of upholding equity is upholding equal access to the legal profession¹⁵ and avoiding harm to one segment or class of people in the community.¹⁶ As Justice Abella noted, “Substantive equality demands more than just the availability of options and opportunities — it prevents “the violation of essential human dignity and freedom” and “eliminate[s] any possibility of a person being treated in substance as ‘less worthy’ than others.”¹⁷

10. The Decisions are not in line with the equality and human rights of children. The recognition that children are an inherently vulnerable group of people in society is well-established in Canadian law.¹⁸ Children face marginalization, historical and ongoing disadvantage, and are an equity seeking group. Ensuring respect for the interests and rights of children requires analysis and decision making founded on rights respecting equity principles.

11. Children are active members of the public, who regularly require, seek, and retain legal services. Children of all ages are recognized across provincial and federal law as active participants in the justice system, capable of exercising their rights, and for whom access to justice is an important and significant concern.¹⁹ Children consult and retain lawyers regularly across diverse areas of law such as immigration, housing, education, criminal justice, employment, health, family, child protection and more.²⁰

12. In its licensing function, the LSO and Tribunals must ensure that children’s interests as members of the public are protected and that children’s confidence in the legal profession is maintained. Decisions made regarding licensure must be viewed from the vantage point of children as equally important and vulnerable members of the public.

¹⁵ *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at [para 40](#)

¹⁶ *Trinity Western University v Law Society of Upper Canada*, *supra* note 14 at [para 39](#)

¹⁷ *Law Society of British Columbia v Trinity Western University*, *supra* note 15 at [para 95](#), citing *Quebec (Attorney General) v A*, 2013 SCC 5 at [para 138](#)

¹⁸ *R v DB*, 2008 SCC 25 at [para 61](#) [DB]; *AB v Bragg Communications Inc*, 2012 SCC 46 at [para 17](#) [AB v Bragg]

¹⁹ *Justice for Children and Youth v JG*, 2020 ONSC 4716 at [para 38](#)

²⁰ *Ibid* at [para 53](#)

13. Access to justice, the interests of children, and confidence in the integrity of the legal profession are harmed when licensure is granted to people who have violated the dignity, trust, and integrity of children in the most egregious ways.²¹

B. A Best Interests of Children Analysis is Essential to a Reasonable Decision

14. The Supreme Court of Canada, in decisions across a range of legal subjects, has held that:

“protecting children through the application of the best interests of the child principle is widely understood and accepted as a basis for analysis in Canada’s legal system.”²²

15. As a signatory to the *UNCRC*, Canada has undertaken to ensure that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”²³ The best interests of children is a procedural guarantee, as well as a substantive right and a fundamental interpretive legal principle.²⁴ The *UNCRC* is the authoritative articulation of the human rights of children. The General Comments of the United Nations Committee on the Rights of the Child provide expert interpretive direction on the scope and substance of those rights. Canadian courts have regularly recognized the role of the *UNCRC* and the General Comments in interpreting domestic law.²⁵ Domestic legislation is presumed to comply with Canada’s international obligations.²⁶

²¹ *Law Society of Upper Canada v Lesieur*, 2016 ONLSTH 173 at [paras 17-18](#)

²² *Kanthasamy v Canada*, 2015 SCC 61, at [paras 36-40](#) [*Kanthasamy*]; citing *AB v Bragg*, *supra* note 18 at [para 17](#); See also *AC v Manitoba*, 2009 SCC 30 at [para 81](#) [*AC v Man*]

²³ *UNCRC*, *supra* note 3 at art 3; See also, United Nations Committee on the Rights of the Child, *General Comment No. 14, (2013) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, 29 May 2013 [*GC No. 14*]

²⁴ *GC No.14*, *supra* note 23 at [para 6](#)

²⁵ See for e.g., *AC v Man*, *supra* note 22 at [para 93](#); *AB v Bragg*, *supra* note 18 at [para 17](#); *R v Sharpe*, 2001 SCC 2, at [para 170](#); *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at [para 71](#) [*Baker*]

²⁶ *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para [105](#) [*Mason*]; *Baker*, *supra* note 25 at paras [70-71](#); see also: *DB*, *supra* note 18 at [para 60](#)

16. In decisions that affect children, their best interests and the unique vulnerabilities of childhood are imperative considerations.²⁷ Children’s rights, and attention to their interests, are central values in Canadian society.²⁸ Appropriate application of the best interests of children principle requires an adjudicator to be “alert, alive and sensitive” to children’s best interests.²⁹

17. As stated by the Supreme Court of Canada, “decision makers must do more than simply *state* that the interests of a child have been taken into account....Those interests must be “well identified and defined” and examined “with a great deal of attention” in light of all the evidence.”³⁰

18. In the case before this Honourable Court, the Tribunals failed to give due consideration to the best interests of children at both stages – the decision that the applicant is of good character, and that a meager condition limiting the applicant’s contact with children is an appropriate mechanism to enhance public confidence in the legal profession and provide extra protection of children. This failure constitutes a palpable and overriding error.

19. Where, as in this case, the interests of children are involved, the human rights and best interests of children must be fostered and not subordinated.³¹

i. The practice restriction is an affront to the dignity, equity and human rights of children

20. The Supreme Court of Canada has consistently recognized that because children are inherently vulnerable, they are deserving of enhanced, not diminished, protection of their rights.³²

There is a positive legal obligation, including on the LSO, to protect children from harm³³ in a

²⁷ *Kanhasamy*, *supra* note 22 at [paras 41, 58](#)

²⁸ *DB*, *supra* note 18 at [para 48](#); *Gordon v Goertz*, 1996 2 SCR 27 at [para 44](#); *Catholic Children’s Aid Society of Metropolitan Toronto v CM*, 1994 2 SCR 165 at pg [203-204](#) [CM]

²⁹ *Baker*, *supra* note 25 at [para 75](#)

³⁰ *Kanhasamy*, *supra* note 22 at [para 39](#)

³¹ *GC No.14*, *supra* note 23 at [para 34](#); United Nations Committee on the Rights of the Child, *General Comment No. 7 (2005): Implementing child rights in early childhood*, CRC/C/GC/7/Rev.1, 20 September 2006 at [para 17](#)

³² *R v Sharpe*, *supra* note 25 at [paras 175-177](#); *AB v Bragg*, *supra* note 18 at [paras 17-18](#); *Kanhasamy*, *supra* note 22 at [para 41](#); *FN (Re)*, 2000 SCC 35 at [para 14](#) [FN].

³³ *AC v Man*, *supra* note 22 at [para 30](#)

manner that serves to enhance respect for the dignity of children as members of the public and not exclude or further marginalize their position in society. The meager practice restriction does the latter.

21. The UN Committee on the Rights of the Child is adamant that “implementation of the human rights of children must not be seen as a charitable process, bestowing favors on children,”³⁴ and notes that “if children’s interests are not highlighted, they tend to be overlooked.”³⁵ Appropriate protections of vulnerable people ameliorate marginalization and serve to enhance social inclusion – including access to justice - and do not put limitations on the vulnerable group.

22. Children are not members of the public who can be segregated or hived off to preserve the privilege of an LSO applicant to practice law. They are not ‘less worthy’ of consideration as members of the public; rather their interests must be protected, and their confidence in the legal profession must be ensured.

23. Other than two cases that reference women, children are the only vulnerable group for whom licensing or conduct decisions impose practice restrictions prohibiting a lawyer or paralegal’s contact with a group of people.³⁶ Such a restriction for other equity seeking groups or vulnerable people would be inconsistent with the LSO’s public interest and access to justice mandate, and would be unthinkable.

ii. The decisions fail to adequately protect children as vulnerable members of the public

³⁴ United Nations Committee on the Rights of the Child, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 34th Session, CRC/GC/2003/5, 27 November 2003 at [para 11](#)

³⁵ *GC No.14, supra* note 23 at [para 37](#)

³⁶ The list of cases where a practice restriction exists for children is as follows: *Law Society of Ontario v Lesieur*, 2021 ONLSTH 144 at [para 47\(5\)\(c\)](#); *Law Society of Ontario v Schulz*, 2021 ONLSTH 178 at [para 71\(3\)\(a\)](#); *Law Society of Ontario v Rooney*, 2019 ONLSTH 19 at [para 22\(2\)\(c\),\(d\)](#); *Law Society of Ontario v Splinter*, 2021 ONLSTH 58 at [para 33\(6\)](#) [*Splinter*]; *Law Society of Upper Canada v Vijaya*, 2018 ONLSTH 42 at [para 59\(1\)\(a\)](#); The cases where practice restrictions extend to women is *Zuker (Re)*, 1999 CanLII 18536 (ON LST) at [para 15 \(c\)](#) and *Lesieur* (as listed above).

24. An assessment of a child’s best interests must also include consideration of the child’s safety, “the right of the child to protection against all forms of physical or mental violence, injury or abuse.”³⁷ The best interests of the child analysis cannot understate protecting children from violence and specifically sexual offences against children. It is a matter of uncontroverted legal and social consensus that sexual abuse of children is “a crime that is abhorrent to Canadian society.”³⁸ Sexual abuse of children requires a correspondingly high level of censure and a high level of vigilance. The harm from these offences is grave: “Children are robbed of their youth and innocence, families are often torn apart or rendered dysfunctional, lives are irretrievably damaged and sometimes permanently destroyed.”³⁹

25. In a situation such as the licencing decision under consideration in this case, where the proposed licensee has a diagnosis of pedophilia in remission, has sexually abused young children, including his own child, has used child pornography, and has been admonished from unsupervised contact with children, the Tribunals, in protecting the public interest, must consider the protection of children from this abhorrent and deeply troubling harm. The Supreme Court of Canada has said about sexual offences against children that “providing enhanced protection to children from becoming victims of sexual offences is vital in a free and democratic society.”⁴⁰

26. While the Tribunals attempted to protect children from harm by imposing a restrictive condition, they failed to recognize that the best interests of children analysis involves interconnected and indivisible factors.⁴¹ In this case, the protection of children cannot subjugate

³⁷ *UNCRC*, *supra* note 3 at [art 19](#)

³⁸ *R v Friesen*, 2020 SCC 9 at [para 105](#)

³⁹ *R v D(D)*, 2002 CanLII 44915 (ON CA) at [para 45](#)

⁴⁰ *R v KRJ*, 2016 SCC 31 at [para 66](#)

⁴¹ *GC No. 14*, *supra* note 23 at [para 16\(a\)](#)

respect for them as equal members of the public whose rights and dignity require enhanced protection.

C. The Practice Condition as it is Presently Framed is Insufficient

27. If this Honourable Court upholds the Tribunals' decision that AA is currently of good character, JFCY submits that the practice restriction as it is currently framed is wholly inadequate and constitutes a palpable and overriding error. Enhancing confidence and providing safety is not achieved by imposing a meager condition that has no elements to meaningfully address the risks of recidivism - it does not protect children.

28. The Tribunals did not conduct a best interests of the child analysis, nor address the question of how or whether the practice restriction would enhance public confidence or ensure the safety of children from a best interests of children perspective. The restriction is not alert, alive, and sensitive to what the best interests of children would require in order to meet the objectives and ends they identify.

29. An appropriate practice restriction in this case must include conditions that address pedophilia as a complex persistent mental health disorder, and must account for the evidence provided by the expert psychiatrist, who identified specific concerns and treatment recommendations, specifically noting that: (a) AA should attend therapy in a group setting; (b) AA should not be unsupervised around women or children; (c) it is important to have people involved who are aware of his circumstances and challenges; and (d) AA would always have to remain vigilant.⁴²

30. Additionally, conditions must be imposed that address public safety and child safety considerations that are unique to the practice of law. As it stands, this brand-new licensee can still

⁴² *Hearing Division, supra* note 1 at [paras 47, 49](#)

represent children, and can have access to intimate images of children in the form of disclosure from child protection, criminal justice or other proceedings.

31. It follows that while the proposed licensee should not ever be alone with children, there must be additional conditions that include: specific monitoring and reporting by a member in good standing of the LSO; counselling requirements and reporting on compliance; a restriction against any representation of children; and a restriction on practicing in areas of law where issues of child abuse, child pornography, or other sexual misconduct involving children might arise.⁴³

32. The Tribunals' silence on these significant considerations demonstrates that the Decisions fail to be alert, alive and sensitive to children's rights and interests.

PART V - CONCLUSION

33. The Decisions are fundamentally inconsistent with the best interests of the child and as such are in error.

PART IV – ORDER REQUESTED

34. JFCY takes no position regarding the Order of this Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 3rd day of July, 2024.



Samira Ahmed & Mary Birdsell, Counsel for JFCY

⁴³ For examples of detailed conditions to protect the public see *Splinter*, *supra* note 36 at [para 33](#). Although not about children, see also *Sheps v Law Society of Ontario*, 2016 ONLSTH 124 at [para 102](#).

SCHEDULE A

LIST OF AUTHORITIES

1. [*AA v Law Society of Ontario*](#), 2023 ONLSTH 99
2. [*AA v Law Society of Ontario*](#), 2024 ONLSTA 6
3. [*Trinity Western University v Law Society of Upper Canada*](#), 2018 SCC 33
4. [*Loyola High School v Quebec \(Attorney General\)*](#), 2015 SCC 12
5. [*Law Society of British Columbia v Trinity Western University*](#), 2018 SCC 32
6. [*Quebec \(Attorney General\) v A*](#), 2013 SCC 5
7. [*R v DB*](#), 2008 SCC 25
8. [*A.B. v Bragg Communications Inc.*](#), 2012 SCC 46
9. [*Justice for Children and Youth v J.G.*](#), 2020 ONSC 4716
10. [*Law Society of Ontario v Lesieur*](#), 2016 ONLSTH 173
11. [*Kanthasamy v Canada \(Citizenship and Immigration\)*](#), 2015 SCC 61
12. [*AC v Manitoba \(Director of Child and Family Services\)*](#), 2009 SCC 30
13. [*R v Sharpe*](#), 2001 SCC 2
14. [*Baker v Canada \(Minister of Citizenship and Immigration\)*](#), [1999] 2 SCR 817
15. [*Mason v Canada \(Citizenship and Immigration\)*](#), 2023 SCC 21
16. [*Gordon v Goertz*](#), [1996] 2 SCR 27
17. [*Catholic Children's Aid Society of Metropolitan Toronto v M. \(C.\)*](#), [1994] 2 SCR 165
18. [*F.N. \(Re\)*](#), 2000 SCC 35
19. [*Law Society of Ontario v Lesieur*](#), 2021 ONLSTH 144
20. [*Law Society of Ontario v Schulz*](#), 2021 ONLSTH 178
21. [*Law Society of Ontario v Rooney*](#), 2019 ONLSTH 19
22. [*Law Society of Ontario v Splinter*](#), 2021 ONLSTH 58

23. [Law Society of Upper Canada v Vijaya](#), 2018 ONLSTH 42
24. [Zuker \(Re\)](#), 1999 CanLII 18536 (ON LST)
25. [R v Friesen](#), 2020 SCC 9
26. [R v D \(D\)](#), 2002 CanLII 44915 (ON CA)
27. [R v KRJ](#), 2016 SCC 31
28. [Sheps v Law Society of Upper Canada](#), 2016 ONLSTH 124

SCHEDULE B

RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND BY-LAWS

[LAW SOCIETY ACT](#), RSO 1990, c L.8, s 4.2

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. [2006, c. 21](#), Sched. C, s. 7.

[UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD](#), Can. T.S. 1992 No. 3.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

...

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

GENERAL COMMENT NO.14 ON THE RIGHTS OF THE CHILD TO HAVE HIS OR HER BEST INTERESTS TAKEN AS A PRIMARY CONSIDERATION, CRC/C/GC/14, 29 May 2013

6. The Committee underlines that the child's best interests is a threefold concept:

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

...

16. In giving full effect to the child's best interests, the following parameters should be borne in mind:

(a) The universal, indivisible, interdependent and interrelated nature of children's rights;

(b) Recognition of children as right holders;

(c) The global nature and reach of the Convention;

(d) The obligation of States parties to respect, protect and fulfill all the rights in the Convention;

(e) Short-, medium- and long-term effects of actions related to the development of the child over time.

...

34. The flexibility of the concept of the child's best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child's best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child's best interests as irrelevant or unimportant.

...

37. The expression "primary consideration" means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.

UN COMMITTEE ON THE RIGHTS OF THE CHILD (CRC), GENERAL COMMENT NO. 7 (2005): IMPLEMENTING CHILD RIGHTS IN EARLY CHILDHOOD,
CRC/C/GC/7/REV.1, 20 SEPTEMBER 2006

17. Evolving capacities as an enabling principle. Article 5 draws on the concept of “evolving capacities” to refer to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children’s evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children’s physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child’s interests and wishes as well as the child’s capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more guidance than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations. Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children’s autonomy and self-expression and which have traditionally been justified by pointing to children’s relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer “direction and guidance” in a child-centred way, through dialogue and example, in ways that enhance young children’s capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14).

UN COMMITTEE ON THE RIGHTS OF THE CHILD (CRC), GENERAL COMMENT NO. 5 (2003): GENERAL MEASURES OF IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD, CRC/GC/2003/5, 27 NOVEMBER 2003

11. The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.

Court File Number: 204/24

Law Society of Ontario
Applicant

and

A.A.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

Proceeding commenced at Toronto

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