



THE *CHARTER* CHALLENGE

Ontario Justice Education Network

CASE SCENARIO Fall 2015

Marie Reyes on her own behalf and as Litigation Guardian of Selene Reyes

v.

Canada (Attorney General)

*This OJEN Charter Challenge Case Scenario has been adapted from the Official Problem used at the **2015 Wilson Moot**. The Wilson Moot was conceived to honour the outstanding contribution to Canadian law made by the late Honourable Justice Bertha Wilson and, in the spirit of this contribution, to promote justice for those disempowered within the legal system. The goal of The Wilson Moot is to explore legal issues concerning women and minorities, and thereby promote the education of students and the legal profession in these areas of pressing concern. OJEN would like to thank the organizers of the Wilson Moot, Blake, Cassels and Graydon, LLP, for letting it adapt this law school resource for a high school audience.*

FEDERAL COURT OF CANADA

2015 FCC 999

Date: 20150925

Court File No: 23158-15

BETWEEN:

MARIE REYES on her own behalf and as litigation guardian
of Selene Reyes

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

REASONS FOR DECISION

B. ARTSMAD J.

Introduction

[1] Marie Reyes is currently serving a four-year prison sentence for assault with a weapon at Maplehurst Women's Penitentiary, a minimum-security prison located near Milton, Ontario. Selene Reyes is Marie's one-year-old daughter.

[2] The federal government recently announced significant reforms to the Correctional Service of Canada's Mother-Child Program, which allows certain female federal prisoners to keep their young children with them in prison while they serve their sentences, under a number of conditions. Shortly before Marie began serving her sentence, and while she was pregnant

with Selene, the Minister of Public Safety and Emergency Preparedness (the “Minister”) directed that women incarcerated for violent offences, such as Marie, would no longer be eligible to participate in the Mother-Child Program.

[3] The terms of the Mother-Child Program, as it existed immediately prior to the reform, are set out in a Directive of the Commissioner of the Correctional Service of Canada, which is attached as Exhibit “A” (the “Commissioner’s Directive”). Pursuant to the Minister’s direction, the Commissioner amended the Directive to add s. 18.1, under the heading “Eligibility”:

18.1 Women convicted of any crime of violence, regardless of whether the crime involved a child, are not eligible to participate in the program.

As a result, Marie was not eligible to enroll in the Mother-Child Program.

[4] Marie brought an application before the Federal Court of Canada, on behalf of herself and Selene seeking declarations that:

- a) Marie’s exclusion from the Mother-Child Program infringes her rights under section 15 of the Canadian *Charter of Rights and Freedoms* (the “*Charter*”);
- b) Marie’s exclusion from the Mother-Child Program infringes Selene’s rights under section 15 of the *Charter*;
- c) Marie’s exclusion from the Mother-Child Program infringes her rights under section 7 of the *Charter*; and
- d) the infringements of sections 7 and 15 are not saved by section 1 of the *Charter*.

[5] For the reasons that follow, I would grant the declarations sought and find s. 18.1 of the Commissioner’s Directive in violation of Marie’s rights under ss. 7 and 15 of *Charter* and Selene’s rights under s. 15 of the *Charter*. These violations cannot be saved under s. 1 of the *Charter*.

Facts

[6] Marie is 32 years old at the time of the hearing of this application. She was born and grew up in Winnipeg. She is of Filipina descent. Her mother, who passed away when Marie was 21, immigrated to Canada as a nanny through the Live-In Caregiver Program. Marie has never known her father or any of her paternal relatives

[7] Marie has a half-sister, Christina Reyes, who is four years older than her. Marie's mother and Christina's father were married but divorced two years before Marie was born. Christina and Marie were raised together by their mother and have always enjoyed a close relationship.

[8] Christina lives in Calgary with her common law partner and their three children, who are all under the age of 10. Christina works part-time as a nurse; her common-law husband, Mike, is currently employed as a machine operator with an oil company operating near Fort McMurray. Mike spends one weekend a month with his family and stays in Fort McMurray the remainder of the time.

[9] In high school, Marie became involved with a tough crowd and began drinking, smoking marijuana, and becoming involved in petty crimes such as vandalism and shoplifting. Marie's mother was overwhelmed trying to discipline her and often struck her or locked her out of the house, forcing her to seek shelter with friends and boyfriends, and occasionally, to sleep in a neighbourhood park.

[10] When she was 17, Marie was diagnosed as having bipolar disorder. She was able to attend some counseling arranged by her high school's social worker but was unable to afford the medications that were recommended by her family physician.

[11] By her early 20s, Marie was drinking heavily and regularly using harder drugs including cocaine and crystal meth. Although she occasionally was able to secure full- or part-time employment, Marie frequently quit or was dismissed from jobs for reasons largely related to her drug use. She increasingly resorted to illegal means to support her habits, including theft, prostitution, and dealing in various drugs.

[12] During this period, Marie was charged with a number of offences, disposed of as follows:

- a. Age 22 (2005): possession of marijuana and cocaine. Marie entered a diversion program that led to the withdrawal of these charges in exchange for community service and her participation in a drug counseling program.
- b. Age 24 (2007): communication for the purposes of prostitution and resisting arrest. Marie received a conditional discharge.
- c. Age 25 (2008): theft under \$5000 (three counts) and assault. Marie received a six-month suspended sentence.
- d. Age 26 (2009): possession of methamphetamine for the purposes of trafficking. Marie served a one-year sentence in a provincial prison near Brandon, Manitoba.

[13] While serving her sentence for the trafficking charge, Marie was able to stop using drugs and participated in counseling and education programs offered by the prison. She was also able to take mood stabilizing medication to treat her bipolar disorder.

[14] When Marie was released from prison in 2010, she returned to Winnipeg and was determined to leave her old life behind. Unfortunately, Marie faced a number of obstacles. Her criminal record made it difficult to secure housing and employment. Her mother had passed away and Christina was living in Calgary, leaving Marie with few close supports.

[15] She stopped taking mood stabilizers. Marie began attending Alcoholics Anonymous meetings and aside from a few brief lapses, was largely successful in staying sober. However,

she found herself socializing from time to time with her old friends, many of whom were still involved with drugs and crime.

The Assault

[16] In December 2013, Marie was visited by an acquaintance, Samantha, who was still involved in the drug ring that was connected to Marie's trafficking conviction. Samantha told Marie that she needed her help moving a significant quantity of cocaine to Calgary for sale and demanded that Marie take the drugs with her in her vehicle the next time she travelled to see Christina.

[17] Marie refused, but Samantha insisted that Marie still owed money to another dealer in the ring and could eliminate her debt by completing the delivery. Marie and Samantha argued, which led to a physical altercation. After Samantha punched Marie in the face and shoved her into the wall, Marie struck Samantha in the head with a telephone in her living room.

[18] A neighbor called the police to report a disturbance. When the police arrived, Samantha was unconscious and Marie was arrested and charged with assault with a weapon. She was released on bail pending trial.

The Pregnancy

[19] In February 2014, Marie learned that she was pregnant by a man that she had been seeing casually. When she told him about the pregnancy, he urged her to terminate it and told

her in no uncertain terms that he was unable to support a child financially and had no intention of being involved in the child's life. As a result, the relationship ended.

[20] Despite knowing that she was potentially facing a custodial sentence for assaulting Samantha, Marie decided to keep the baby.

[21] Her lawyer told her about the Mother-Child Program and explained that she would have to make an application to participate, if and when she received a federal prison sentence.

The Trial

[22] At trial in July 2014, Marie's defence of self-defence was rejected by the trial judge. Marie was convicted of assault with a weapon and sentenced to four years in prison.

[23] She did not pursue any appeal as to conviction or sentence, as her lawyer advised her that an appeal would likely be unsuccessful. Marie surrendered and began serving her sentence at Maplehurst in August 2014. Due to overcrowding, she was not able to serve her sentence in a facility near Winnipeg or Calgary.

The Program

[24] The Correctional Service of Canada's Institutional Mother-Child Program allows certain female federal prisoners to keep their young children with them in prison while they serve their sentences, under a number of conditions. The Program is established under Commissioner's Directive 768 pursuant to ss. 76 and 77 of the *Corrections and Conditional Release Act*.

[25] The Mother-Child Program has existed in some form since 1999; the existing Commissioner's Directive (save for the newly-introduced section 18.1) has been in effect since 2003.

[26] The stated Policy Objectives of the Mother-Child Program are "to provide a supportive environment that fosters and promotes stability and continuity for the mother-child relationship" and "to detail operational practices required to implement, maintain, and monitor the Mother-Child program."

[27] The Commissioner's Directive also states the pre-eminent consideration of the program. It declares: "The best interests of the child shall be the pre-eminent consideration in all decision relating to participation in the Mother-Child Program. The best interests of the child include ensuring the safety and security as well as the physical, emotional and spiritual well-being of the child."

[28] Inmates must meet all eligibility requirements to be considered for acceptance into the Program. Prior to the amendments introduced by s. 18.1, the eligibility requirements for mothers were:

- a) the woman inmate must be classified as minimum or medium security, she must be housed in an institution offering the program; and
- b) she must not have been convicted of a crime involving a child.

If an inmate was convicted of a crime involving a child, they could be eligible to participate if a psychiatric assessment determined that she did not represent a danger to her child.

[29] The upper age limit of the child for full-time residency in the Mother-Child Program is four years (at the fourth birthday).

Material Changes to the Program

[30] In April 2014, the *Vancouver Tribune* published a story that revealed that Tessa Coulten, a high-profile offender who pleaded guilty to four counts of manslaughter for her role in assisting her then-husband rape and murder several young women involved in the sex trade, had been permitted to enroll in the Mother-Child Program and to keep the couple's child with her during her incarceration.

[31] The existence of the Mother-Child Program had not previously been widely publicized, but after the *Tribune's* story ran, several victims' rights organizations began pressing the government to cancel or significantly reform the program.

[32] A month after the *Tribune* story was published, Eva Novak, the federal Minister of Public Safety and Emergency Preparedness, announced that the government would promulgate reforms to the Mother-Child Program to make all prisoners convicted of violent crimes ineligible to participate.

[33] At the press conference, Minister Novak referred to the Coulten case and also stated:

This government promised the Canadian people that we would put an end to Club Fed, and we are living up to that promise. I think most Canadians were shocked to learn that women convicted of serious crimes of violence are allowed to keep their children and raise them in prison. The purpose of prisons is to punish offenders, and that does not mean paying for violent offenders to have the privilege of raising their children while they serve their sentences.

[34] In response to a question from a member of the press gallery, Minister Novak explained:

“Look, prisons are just not appropriate places for children. Being raised in a penitentiary by a person convicted of a violent crime is no way to assure the safety and development of a child.”

[35] Pursuant to the Minister’s direction, the Commissioner amended the Directive to add s.

18.1, under the heading “Eligibility”:

18.1 Women convicted of any crime of violence, regardless of whether the crime involved a child, are not eligible to participate in the program.

[36] The government did not conduct any study or risk assessment of the Program before making the decision to exclude violent offenders.

[37] As a result of the reforms, Marie was ineligible for the Program and did not apply to participate. She gave birth to Selene in September 2014 while incarcerated at Maplehurst. Selene was apprehended within 12 hours and turned over to Christina’s care in Calgary, where she has remained since.

The Evidence

[38] Shortly after Selene was apprehended and separated from Marie, Marie made this application. In her affidavit in support of her application, Marie stated:

Christina has brought Selene to visit me at Maplehurst four times since she was born. I wish desperately that they could come more often, but I understand that it is a long way for Christina to travel and that she has to arrange care for her other children to do so. When I see Selene, and talk to her and play with her, even just for a few hours, I am so happy and so filled with hope. When she leaves, I am usually depressed for weeks. It is like she is being ripped out of my arms all over again. I am scared that Selene will not remember me when I get out. I don’t

know how I am ever going to make it up to her, these years that we have lost. When I think about my own daughter not knowing me, not knowing why I am not there to play with her, to hug her, to care for her, I cannot stop crying.

[39] Marie's sister Christina also gave affidavit evidence. In it, she stated that she was doing her best with Selene and believed that she was generally a happy and healthy child, although she is usually tearful and upset following visits with Marie. Christina also stated that she was prepared to continue to care for Selene as long as Marie is incarcerated, as there are no other relatives or friends who would be able to do so, and Christina and Marie are both determined that Selene should not be placed in foster care.

[40] However, it is clear that Christina often feels overwhelmed physically, emotionally, and financially, raising a total of four children with her common-law partner away most of the time.

[41] Marie also led expert evidence in the form of an affidavit from Dr. Sumita Dhaliwal, a psychologist specializing in female prisoners. Dr. Dhaliwal's evidence was that:

a. As a general rule, female prisoner populations are much less violent than male prisoner populations. While not non-existent, there are also far fewer problems with contraband (including drugs and weapons) in minimum- and medium-security women's prisons than in their male counterparts.

b. A child's early emotional attachment to his or her caregiver(s) is crucially important to his or her development. Secure attachment promotes healthy brain functioning, social development, and emotional security. Children who do not develop secure bonds with a caregiver are at a higher risk of intellectual deficits, behavioural issues, and mental health problems. The crucial period for the formation of such bonds is between the ages of one and twenty-four months.

c. Female prisoners who are able to participate in mother-child programs generally appear to improve in confidence and self-esteem over the course of their participation, and are more likely to avail themselves of other educational and personal development programs offered by the prison.

d. The forced separation of a child from her mother is virtually always a traumatic event for a mother; the trauma is exacerbated in women with mental health or addiction issues.

e. A mother who is separated from her child during incarceration is more likely than other prisoners to be depressed. She will also face considerable difficulties in re-establishing a mother-child bond upon release, even if the child is returned to her care. These difficulties are particularly acute if the child has bonded with another caregiver.

f. There are a handful of studies that suggest that female prisoners who are permitted to keep their children in prison while they serve their sentences are less likely to re-offend.

g. Most European countries have some form of a mother-child program that allows female prisoners to keep their children with them in prison for some period of time; there are various conditions, terms, and limitations to these programs across different countries.

[42] Dr. Dhaliwal is not aware of any other country that excludes all prisoners convicted of violent offences from participation in such programs, although some countries do not permit women convicted of the most serious offences of violence (generally murder, attempted murder, aggravated assault, sexual assault, and similar offences) to enroll.

[43] On cross-examination on her affidavit, Dr. Dhaliwal conceded that overall, there is little academic research on prisoner mother-child programs and that her opinions were drawn from a relatively limited body of work.

[44] Dr. Dhaliwal also agreed that comparable programs are generally unavailable in the United States. In her view, this reflected a lack of institutional resources in prisons as well as much more punitive attitudes towards prisoners on the part of both the public and lawmakers.

[45] The government relied on the affidavit of Edwin Fung, a senior administrator at Maplehurst with over fifteen years of experience in the Canadian correctional system. Mr. Fung's evidence was that:

- a. Prior to the promulgation of section 18.1 of the Commissioner's Directive, an average of 75 women were enrolled in the Mother-Child Program across Canada at any given time. Approximately 45% of these women would now fall within the scope of section 18.1 and would be ineligible to participate in the program.
- b. Where a prisoner's application to enroll in the Mother-Child Program is refused, there are several possibilities for the child's care during the mother's incarceration. It is often possible for the child to be cared for by her other parent or by other relatives or friends. Where there is no such suitable placement, the child would be apprehended by the provincial child welfare authorities and would likely be placed into foster care.
- c. In Mr. Fung's view, there were risks to the children living in prison through the Mother-Child Program, including the presence of other violent offenders, the presence of mentally ill or drug-addicted prisoners, and the presence of contraband. Anecdotally, some prison guards have expressed their concerns about these risks and about their ability to ensure the safety of children residing in prison.
- d. He was aware of approximately two security incidents over the last 28 months preceding his affidavit involving disturbances in Canadian federal prisons (across the country) involving women enrolled in the Mother-Child Program. One involved violence between prisoners and one involved possession of contraband by a mother enrolled in the program. Neither resulted in any physical injury to a child. The case involving contraband possession resulted in the mother's removal from the Mother-Child Program.
- e. The participation of a mother-child pair in the Mother-Child Program costs the federal government approximately \$35,000 per year over and above the costs of incarcerating the mother alone.

[46] There was no dispute among the parties that breastfeeding is superior to formula feeding for babies in their first year. This is due both to the beneficial health effects of breast milk as compared to formula and the emotional bond that develops between mother and baby during breastfeeding. The Canadian Paediatric Society recommends exclusive breastfeeding

for the first six months of life and the continuation of breastfeeding (together with other food sources) for up to 18 months after that.

[47] Where a mother is not enrolled in the Mother-Child Program but wants to provide breast milk to her baby, prison authorities will generally facilitate the storage and transportation of the mother's breast milk to the baby's caregivers. In Marie's case, this was not possible because of the distance between Maplehurst and Christina's home in Calgary.

[48] While there was some dispute regarding the precise numbers cited by competing witnesses from various studies, the Attorney General accepted that racialized women (particularly aboriginal women), women suffering from mental illnesses, and women who have issues with substance abuse are significantly over-represented in Canadian prisons compared with the general population. Such women are more likely to be serving time for violent offences than Caucasian women and women without mental health or substance abuse issues.

[49] The rehabilitative needs of offenders are assessed upon entering custody. From 2008-2013, approximately 85% of female offenders were assessed as having needs relating to substance use. 70% were assessed as requiring assistance with social or emotional difficulties. 60% were assessed as having needs relating to family or marital issues. With respect to the latter, both Dr. Dhaliwal and Mr. Fung agreed that female prisoners were much more likely to have been victims of abuse by family members or romantic partners than women in the general population.

[50] Many female offenders, particularly those convicted of violent offences, have lower levels of education. Approximately 50% of female prisoners in Canada did not complete secondary school, as opposed to approximately 15% of the general population.

Legal Issues

[51] Marie applies for a determination of the following four issues:

- (1) Does section 18.1 of the Commissioner's Directive infringe Marie's right to equality under section 15(1) of the *Charter*?
- (2) Does section 18.1 of the Commissioner's Directive infringe Selene's right to equality under section 15(1) of the *Charter*?
- (3) Does section 18.1 of the Commissioner's Directive deprive Marie of life, liberty or security of the person as protected by section 7 of the *Charter*, and if yes, is that deprivation not in accordance with the principles of fundamental justice?
- (4) If section 18.1 of the Commissioner's Directive infringes either section 15(1) or section 7, is the infringement justified under section 1 of the *Charter*?

The Law

Section 15

[52] Section 15(1) of the *Charter* protects against discrimination. It reads:

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.

[53] The test for determining if there is a section 15(1) violation was set out by the Supreme Court of Canada (SCC) in *R. v. Kapp*, 2008 SCC 41 at paras. 40-41, and more recently reaffirmed in *Quebec (Attorney General) v. A.*, 2013 SCC 5 at para. 324. To determine whether a law discriminates, two questions must be asked: (1) Does the law create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by, for example, perpetuating prejudice or stereotyping?

Section 7

[54] Section 7 of the *Charter* provides:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[55] The SCC recently clarified the s. 7 analysis in *R. v. Bedford*, 2013 SCC 72. The first question in the s. 7 analysis is whether the law “limits”, or “negatively impacts” life, liberty or security of the person (para. 58). Section 7 of the *Charter* is meant to assess “the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law.” (para. 121). An unacceptable “impact on one person suffices to establish a breach of s. 7” (para. 127), or “to violate the norm” (para. 122).

[56] The second question in the s. 7 analysis is whether the “limitation” or “deprivation” imposed by the law on security of the person is contrary to the principles of fundamental justice

(*Bedford*, para. 93). In *Bedford* the court referred to three negative “principles of fundamental justice”: arbitrariness, overbreadth, and gross disproportionality. The court noted that “the jurisprudence has given shape to the content of these basic values” (para. 96), and went on to outline them in a way that aims to maintain their distinctiveness while recognizing their overlap (para. 107).

Section 1

[57] If a breach of ss. 7 or 15 is found, the court must determine whether this infringement is justified under s. 1 of the *Charter*. Section 1 provides:

1. The *Canadian Charter of Rights and Freedoms* 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.

[58] The two-stage test for “reasonable limits” was established by the Supreme Court in *R. v. Oakes*, 1986 CanLII 46 at paras. 69-70:

To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a *Charter* right or freedom are designed to serve, must be “of sufficient importance to warrant overriding a constitutionally protected right or freedom”... The standard must be high in order to ensure that objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain s. 1 protection. It is necessary, at a minimum, that an objective relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.

Second, once a sufficiently significant objective is recognized, then the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified. This involves “a form of proportionality test”... Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those

of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the *Charter* right or freedom, and the objective which has been identified as of "sufficient importance".

Analysis and Conclusion

[59] I do not agree with the Attorney General that the distinction drawn by section 18.1 of the Commissioner's Directive is based solely on Ms. Reyes's status as a violent offender.

[60] Rather, Ms. Reyes's exclusion from the Mother-Child program discriminates against both her and Selene on the grounds of gender, race, ethnicity, and in Ms. Reyes's case, also on the ground of disability.

[61] This exclusion has nothing to do with the actual needs, abilities, or circumstances of either Marie or Selene Reyes and nothing whatsoever to do with the best interests of the child. Similarly, in my view the reform to the legislation itself has little to do with the Policy Objectives of the program —only with furthering the government's "tough on crime" agenda.

[62] As a result of this finding, I need not decide, in connection with Selene's *Charter* claim, whether "family status" is an analogous ground under section 15 of the *Charter*, as was counsel's argument.

[63] I further find that section 18.1 of the Directive infringes Marie's right to security of the person in a manner that is both overbroad and grossly disproportionate.

[64] I also find that section 18.1 violates the best interests of a child, which I find to be a principle of fundamental justice in this case. In the context of proceedings directly involving the well-being of children, the best interests of the child meets the three requirements for recognition as a principle of fundamental justice as outlined by the SCC decision in *R. v. Marmo-Levine; R. v. Caine*, 2003 SCC 74 at para. 113. First, it is a legal principle. Second, there is significant social consensus that it is fundamental to the fair operation of the legal system because, in this context, much consideration should be given to the child's best interests. Third, the best interests of the child can be identified with sufficient precision as it is already applied in many legal contexts. Section 18.1 violates the best interests of a child, Selene, because it deprives her of important emotional bonding and physical health benefits associated with close contact with her mother at this foundational age.

[65] Having found that the infringement to Marie's s. 7 right to security of the person is overbroad, grossly disproportionate and inconsistent with the best interests of the child, it is therefore not in accordance with the principles of fundamental justice.

[66] Assuming without deciding that the government's objectives in reforming the Mother-Child Program are pressing and substantial, the infringements cannot be justified under section 1 of the *Charter*. The deleterious effects associated with such a severe restriction of the program clearly outweigh any minimal gains in the deterrence and denunciation of violent crimes, and are not minimally impairing.

[67] My conclusions in this regard are supported by the evidence adduced by the applicants of mother-child programs in other jurisdictions, none of which are as broad or restrictive as the reforms introduced by the Canadian government.

Disposition

[68] I would allow this application and declare accordingly:

- a) Marie's exclusion from the Mother-Child Program infringes her rights under section 15 of the *Charter*;
- b) Marie's exclusion from the Mother-Child Program infringes Selene's rights under section 15 of the *Charter*;
- c) Marie's exclusion from the Mother-Child Program infringes her rights under section 7 of the *Charter*; and
- d) the infringements of sections 7 and 15 are not saved by section 1 of the *Charter*.

[69] To reiterate, I make no finding with respect to Selene's claims that family status is an analogous ground under s. 15 and that section 18.1 infringes her equality rights on such ground.

RELEASED: 09 October 2015

B. Artsmad, J.

GROUNDS FOR APPEAL

For the purposes of the Fall 2015 Charter Challenge, the Attorney General of Canada is appealing Justice Artsmad's decision to the Federal Court of Appeal. Justice Artsmad found in favour of Marie and Selene Reyes on all four issues in Federal Court. The issues on appeal remain largely as they were at the initial application:

1. Did Artsmad J. err in finding that Marie's exclusion from the Mother-Child program infringes her rights under s. 15 of the *Charter*?
2. Did Artsmad J. err in finding that Marie's exclusion from the Mother-Child program infringes Selene's rights under s. 15 of the *Charter*? And, irrespective of this finding, should Selene's claim to an infringement on the analogous ground of "family status" be considered?
3. Did Artsmad J. err in finding that Marie's exclusion from the Mother-Child program infringes her right to security of the person under s. 7 of the *Charter*?
4. In the event of finding any infringement above, can the infringement be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?