

Federal Court



Cour fédérale

Date: 20211022

Docket: T-8-18

Citation: 2021 FC 1125

Ottawa, Ontario, October 22, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**RIGHT TO LIFE ASSOCIATION OF
TORONTO AND AREA, BLAISE ALLEYNE
AND MATTHEW BATTISTA**

Applicants

and

**CANADA (MINISTER OF EMPLOYMENT,
WORKFORCE, AND LABOUR)**

Respondent

and

**ACTION CANADA FOR SEXUAL HEALTH
AND RIGHTS AND BRITISH COLUMBIA
CIVIL LIBERTIES ASSOCIATION**

Intervenors

JUDGMENT AND REASONS

[1] The Applicants, the Right to Life Association of Toronto and Area [TRTL], Mr. Blaise Alleyne, its former president, and Mr. Matthew Battista, a student who hoped to be re-employed by TRTL, seek judicial review of the decision of the Minister of Employment, Workforce, and Labour [the Minister]. The Minister decided to add an Attestation as an eligibility requirement for the 2018 Canada Summer Jobs [CSJ] program. All applicants for funding were required to attest to several statements, including that the job and the applicant organization's mandate respected individual human rights, *Charter* rights and reproductive rights. TRTL did not make the Attestation and, as a result, its application for funding was not considered.

[2] Among other arguments, the Applicants allege that the Minister's decision to add the Attestation is *ultra vires* as it was not authorized by the enabling legislation and was made for an improper purpose. The Applicants also allege that the Minister acted in bad faith and with bias, by imposing the Attestation to respond to the complaints of an abortion rights lobby group. The Applicants further argue that the Attestation engages and infringes their sections 2(a), 2(b), and 15 rights under the *Canadian Charter of Rights and Freedoms* [the *Charter*] and that the Minister failed to proportionately balance the *Charter* rights and protections with the relevant statutory objectives.

[3] The Applicants submit that the Minister's decision to add the Attestation punishes and excludes TRTL and other pro-life groups because they oppose the Government's pro-choice policies. They argue that the debate about abortion should continue and that TRTL's engagement in this debate, through their educational activities, is beneficial to inform the public. However,

this Application is not the forum to fuel this debate. This Application is about whether the decision of the Minister to include an Attestation as a prerequisite for organizations seeking funding under the 2018 CSJ program was reasonable.

[4] For the more detailed reasons that follow, the Application is dismissed. In brief, I find that the decision to add the Attestation as part of the eligibility criteria for the 2018 CSJ program was within the Minister's broad authority pursuant to the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA or the Act]. The Minister did not act for an improper purpose, rely on irrelevant considerations, or show bad faith or a closed mind in making this decision. The Attestation is *intra vires* the DESDA.

[5] I also find that, although not the purpose of the Attestation, its effects engaged the Applicants' rights of freedom of expression and freedom of religion. Applying the framework established in *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*] for determining whether the limitation on the Applicants' *Charter* rights reflects a proportionate balancing, I find that the limitation on the Applicants' rights was minimal and proportional to the objectives of the DESDA and the CSJ program. Of note, the 2018 CSJ program sought to protect and promote the *Charter* and other rights of program beneficiaries. Given that the decision reflects a proportionate balancing, it is a reasonable decision.

I. Background

A. *The Parties*

[6] The Right to Life Association of Toronto is a registered charity incorporated under the *Corporations Act*, RSO 1990, c C.38, carrying on business in Toronto and the Greater Toronto Area. TRTL describes itself as a volunteer, non-sectarian human rights organization dedicated, through education, to upholding the sacredness and inviolability of human life from conception to natural death. The Letters Patent state that its objectives include: to uphold the dignity of human life; to uphold the sacredness and inviolability of human life from the time of conception until death; to protect the interests and rights of the unborn child; to hold conferences, meetings and exchange of views in matters relating to the dignity of human life; and to prepare and submit to the public or private groups, bodies, associations or authorities, information pertaining to the above objects.

[7] Blaise Alleyne, as president of TRTL at the time, filed the application for funding from the 2018 CSJ program.

[8] Matthew Battista, described at the relevant time as a student at the University of Toronto, had been employed as a summer student by TRTL in 2016 and 2017. He attests that he would have sought summer employment again in 2018.

[9] Action Canada for Sexual Health and Rights [Action Canada] was granted intervener status in April 2018 to, among other things, make representations regarding sexual and

reproductive rights and how the activities of “anti-choice” organizations are inconsistent with *Charter* values.

[10] The British Columbia Civil Liberties Association [BCCLA] was granted intervener status in May 2018 for the limited purpose of noting relevant American constitutional principles involving freedom of speech and religion and how these principles may inform Canadian jurisprudence.

B. *TRTL’s Previous Funding from CSJ*

[11] TRTL applied for and received funding from the 2016 CSJ Program.

[12] TRTL also applied for \$29,184.00 in funding from the 2017 CSJ program. Employment and Social Development Canada [ESDC] advised TRTL that due to the lack of sufficient funds for that particular federal constituency, no funds would be granted. TRTL sought judicial review of the funding decision, alleging that the real reason for refusing its application and those of other similar organizations was because of the organizations’ stand on abortion. A settlement was reached and ESDC provided funding to TRTL. The Minister acknowledged that the 2017 application for funding had been denied based on criteria that were not set out either in the 2017 Applicant Guide or in the list of local priorities for Members of Parliament.

C. *The 2018 CSJ Program*

[13] The 2018 CSJ program set out five national priorities:

- (1) Employers who intend to hire youth who are in underrepresented groups, including new immigrant youth/refugees, Indigenous youth, youth with disabilities and visible minorities;
- (2) Small businesses, in recognition of their contribution to the creation of jobs;
- 3) Organizations that support opportunities for official language minority communities;
- 4) Organizations that provide services and/or supports for the LGBTQ2 community; and
- (5) Organizations that support opportunities in science, technology, engineering and mathematics (STEM) and information and communications technology (ICT), particularly for women.

[14] On December 19, 2017, the Minister published the Applicant Guide for the 2018 CSJ program [Applicant Guide]. The Applicant Guide stated that, for an application to be considered complete and eligible for assessment, the applicant must check the box attesting to the following statements [the Attestation]:

I have read and understood the Canada Summer Jobs Articles of Agreement and referred to the Applicant Guide as needed;

The job would not be created without the financial assistance provided under a potential contribution agreement;

Both the job and my organization's core mandate respect individual human rights in Canada, including the values underlying the *Canadian Charter of Rights and Freedoms* as well as other rights. These include reproductive rights and the right to be free from discrimination on the basis of sex, religion, race, national or ethnic origin, colour, mental or physical disability or sexual orientation, or gender identity or expression;

I have all the necessary authorities, permissions and approvals to submit this application on behalf of myself and the organization.

[Emphasis added.]

Only the underlined parts of the Attestation are at issue in this Application.

[15] The Applicant Guide further states:

The employer attestation for CSJ 2018 is consistent with individual human rights in Canada, Charter rights and case law, and the Government of Canada's commitment to human rights, which include women's rights and women's reproductive rights, and the rights of gender-diverse and transgender Canadians.

The government recognizes that women's rights are human rights. This includes sexual and reproductive rights – and the right to access safe and legal abortions.

This explanation of women's reproductive rights is repeated throughout the Applicant Guide.

[16] Under the heading “2.0 Introduction”, the Applicant Guide states:

Canada Summer Jobs (CSJ) is an initiative of the Summer Work Experience program. It provides wage subsidies to employers to create employment for secondary and post-secondary students. Again this year, Canada Summer Jobs welcomes applications from small businesses, not-for-profit employers, public sector and faith-based organizations that provide quality summer jobs for students.

[17] Under the subheading “3.1 Eligible Employers”, the Applicant Guide includes this note:

NOTE: That an organization is affiliated with a religion does not itself constitute ineligibility for this program.

[18] A document titled “Implementing Changes to Eligibility for Canada Summer Jobs 2018: Program Policy Rationale” (ESDC 2017) [Rationale] describes the context and objectives of the Attestation and its elements. In setting out the context, the Rationale notes the Government's

commitment to offering valuable summer work opportunities. It also notes that the Government has publicly expressed its overall priorities, which include strengthening diversity and inclusion, and innovation and skills development. The Rationale then elaborates:

The government has proclaimed itself as feminist and recognizes that women's rights are human rights. This includes sexual and reproductive rights — and the right to access safe and legal abortions. These rights are at the core of the Government of Canada's foreign and domestic policies.

In March 2017, on International Women's Day, the Prime Minister announced a new strategy to spend \$650-million on sexual and reproductive health and rights worldwide. This three-year plan is expected to finance a range of global programs, including contraception, reproductive health, legal abortion, sexuality education and advocacy work.

The government recognizes that everyone should have the right to live according to their gender identity and express their gender as they choose, free from discrimination. The government is committed to protecting the dignity, security, and rights of gender-diverse and transgender Canadians.

[19] The objective of the changes in approach to include the Attestation is:

[t]o prevent Government of Canada funding from flowing to organizations whose mandates or projects may not respect individual human rights, including the values underlying the [*Charter*] and associated case law. Additionally, these changes help prevent youth (as young as 15 years of age) from being exposed to employment within organizations that may promote positions that are contrary to the values enshrined in the [*Charter*] and associated case law.

This change helps to ensure that youth job opportunities funded by the Government of Canada take place in an environment that respects the rights of all Canadians.

[20] A memorandum from the Deputy Minister of ESDC to the Minister, dated December 1, 2017, (with some redactions) described the options considered and sought the

Minister's approval for the inclusion of the Attestation as a new eligibility requirement for funding. The memorandum notes, among other considerations:

Consideration was given to asking employers to certify that the project or job respects the values underlying the *Charter*, as well as respects the individual's reproductive rights and freedoms. However, following consultation with your office, the new desired approach was to also ask that the core mandate of the organization respect individual human rights, including the values underlying the *Charter* as well as other rights. These would include reproductive rights and, non-discrimination on the basis of sex, religion, race, national or ethnic origin, colour, mental or physical disability, sexual orientation, or gender expression and identity.

The addition of this new requirement does not guarantee that only organizations whose mandates align with government priorities will apply for funding. However, it provides the department with an additional means to screen out ineligible organizations—even if the projects themselves seem to respect the spirit of the *Charter* at first glance.

[Emphasis in original.]

D. *TRTL's 2018 CSJ Application*

[21] On December 20, 2017, Mr. Alleyne, president of TRTL, submitted a paper application for funding under the 2018 CSJ program. Mr. Alleyne did not make the Attestation. Instead, he enclosed a letter objecting to the Attestation and proposing a different attestation:

On the basis of conscience, we are unable to express the words that the Minister has required in the Applicant's Guide. We are, however, able to attest that "we support all Canadian law, including Charter and human rights law." We believe the Minister does not have the jurisdiction under law to compel us to make a statement that conflicts with our conscience rights under the Charter. Nor does the Minister have the right to compel speech as a condition of receiving a financial benefit from the government of Canada. We respectfully decline to make a statement that is inconsistent with our fundamental personal beliefs about the value of life and the right to life under section 7 of the Charter. Please confirm that you will accept our application with the above noted

statement in substitution for the statement set forth in the online application process and in the Applicant's Guide.

[Emphasis added]

[22] The application for funding was considered incomplete because TRTL did not fulfil the Attestation requirement and was not considered.

[23] On January 4, 2018, the Applicants filed this Application. The Applicants sought several remedies, including that the decision be quashed, that they be awarded the funding they had sought, and that an interim injunction be granted.

[24] On January 30, 2018, Justice Martine St-Louis dismissed the Applicants' motion for an interim injunction to stay the decision to add the Attestation to the 2018 CSJ program pending the final determination of this Application (*Right to Life Association of Toronto and Area v Canada (Minister of Employment, Workforce, and Labour)*, 2018 FC 102 [Injunction Order]).

[25] The Applicants subsequently amended their Notice of Application to add the allegations that the Minister's decision was made in bad faith, for an improper purpose, on irrelevant considerations and with bias.

II. Overview of Positions

A. *The Applicants' Position*

[26] The Applicants submit that the Minister's decision to add the Attestation is *ultra vires* and does not relate to any of the statutory purposes of the DESDA or the CSJ program, which is only about jobs and aims, more particularly, to provide opportunities for skills development for all Canadians. The Applicants submit that the Attestation was instead added for illegal purposes: to coerce thoughts, opinion, expression or religious and conscientious beliefs of the Applicants and similar groups and to discriminate against them on the basis of their religious beliefs.

[27] The Applicants acknowledge that the Minister has the discretion to award funding to some groups and not others, but argues that the Minister cannot deny the eligibility for funding on the basis of belief and opinion.

[28] The Applicants further argue that the Attestation was added to placate pro-choice lobby groups by excluding TRTL and other similar groups who hold a pro-life view. The Applicants therefore allege that the decision to add the Attestation was made in bad faith, because it was made for an improper purpose or on irrelevant considerations, and that it reflects a reasonable apprehension of bias.

[29] The Applicants dispute the Respondent's contention that they have misunderstood the Attestation. They submit that the Attestation, which refers to their core mandate and activities, relates to their values and beliefs, which are grounded in religion, and prevents them from

disavowing its message of supporting reproductive rights. The Applicants also dispute the Respondent's suggestion that they are not required to sign the Attestation unless they seek funding, and that the Attestation does not silence them because they can still express their views.

[30] The Applicants submit that even if the Minister's purpose in adding the Attestation were permissible, the effects of the Attestation infringe their *Charter* rights. The Applicants argue that the Attestation infringes their right to freedom of expression because it compels speech; to freedom of religion, because it requires them to disavow their religious beliefs; and to equal benefit of the law, because it discriminates against them by excluding them from the program on the grounds of religion.

[31] The Applicants submit that the infringing effects of the Attestation on their *Charter* rights are greatly disproportionate to the statutory objectives because they were completely excluded from applying for funding. The Applicants submit that while the Attestation may have sought to protect the rights of others, it did not protect their rights. The Applicants contend that there is no evidence that the Minister considered their *Charter* rights to freedom of religion and speech or how to proportionately balance the limitation of their rights with the statutory objectives.

[32] As a remedy, the Applicants seek declarations that the Minister's decision to add the Attestation infringes sections 2(a), 2(b) and 15 and cannot be saved by section 1, and that the Minister's decision is *ultra vires*, made in bad faith and for an improper purpose and/or on irrelevant considerations. The Applicants also seek an order in the nature of *certiorari* to quash

the decision and an order in the nature of *mandamus* to require the Minister to award the Applicants the funds they would have been awarded had they made the Attestation.

B. *The Respondent's Position*

[33] The Respondent explains that the CSJ program is an oversubscribed annual discretionary funding program. The purpose of the Attestation was to respect the *Charter* and other rights of all Canadians. The Attestation confirmed that the primary activities of the organization seeking funding and the jobs to be funded did not seek to undermine the *Charter* and other rights of Canadians. The Respondent notes that applying for funding is voluntary and that no organization has a right to funding.

[34] The Respondent first submits that neither Mr. Alleyne nor Mr. Battista have standing; only TRTL has standing to bring this Application.

[35] The Respondent notes that in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Court's role is not to decide whether a different approach is better, only whether the approach taken—i.e., the decision to add the Attestation—is reasonable. The objectives and eligibility criteria for the 2018 CSJ program provide the context for the reasonableness review. The Respondent submits that discretionary policy decisions, including those related to program design, are owed deference.

[36] The Respondent argues that the policy decision to add the Attestation as an eligibility requirement is *intra vires*; it falls within the purpose and objectives of the Act and within the

Minister's broad discretion. The decision was not based on irrelevant considerations nor made for an improper purpose. There is no evidence that the Minister acted with a closed mind.

[37] The Respondent notes that subsection 5(2) of the DESDA, which refers to an inclusive labour market and social well-being and quality of life for all, anchors the *vires* of the Attestation. The Respondent submits that the Attestation ensured that funding flowed only to organizations that respect the rights of all Canadians and promoted the statutory objectives of an inclusive labour market and the social well-being of vulnerable and underrepresented persons.

[38] The Respondent notes that Justice St-Louis found that the Minister had broad discretion (Injunction Order at para 17) and that the program was in the public interest (para 78).

[39] If the Court considers the *Charter* issues, the Respondent submits that neither the purpose nor the effects of the Attestation interfere with the Applicants' rights under sections 2(a), 2(b) or 15. Alternatively, the Respondent argues that if the effects of the Attestation limit the Applicants' *Charter* rights, the limitation is minimal and the decision to add the Attestation reflects a proportionate balancing of the *Charter* rights and protections at play with the statutory objectives of the DESDA and the CSJ program. A proportionate balancing reflects a reasonable decision.

[40] The Respondent submits that the Attestation did not compel speech and force the Applicants to say that they supported abortion, as they alleged, nor did it restrict the Applicants' ability to disavow the message.

[41] The Respondent disputes that the Attestation infringed the Applicant's freedom of religion. The Respondent notes that TRTL describes itself as a non-sectarian, human rights organization with its main activities as education. The Respondent adds that TRTL has not provided any objective evidence that the Attestation interfered with their religious freedoms in a non-trivial way.

[42] The Respondent further submits that the Applicants cannot assert their section 15 claim because section 15 rights belong to individuals and neither Mr. Alleyne nor Mr. Battista has standing to advance this claim.

[43] The Respondent alternatively argues that the Attestation did not infringe the equality rights of Mr. Alleyne or Mr. Battista on the basis of religion for several reasons, including that they were not personally required to make the Attestation, TRTL is not a religious group, and there is no evidence of a differential impact or disadvantage that would be perpetuated by the Attestation.

[44] With respect to the remedy sought by the Applicants, the Respondent submits that if any error is found, only *certiorari* (to quash the Attestation) and a declaration are appropriate. The Respondent submits that it would be pointless for the Court to order a redetermination of the Minister's decision, since the 2018 program is over. The Respondent adds that *mandamus* is not justified as there is no duty owed to the Applicants and funding is a discretionary decision.

C. *The Interveners*

(1) Action Canada for Sexual Health and Rights

[45] Action Canada's mandate is to advance and uphold the sexual and reproductive rights and health of all people, including through advocacy, education and the provision of services.

[46] Action Canada submits that the Attestation fulfills a necessary statutory purpose, which includes promoting the well-being of vulnerable persons. Funds should not be used to support activities that cause harm and which violate constitutionally guaranteed rights such as reproductive rights protected by section 7 of the *Charter*.

[47] Action Canada submits that the Government has a responsibility to uphold the protections for sexual and reproductive rights, noting Canada's international commitments, including the International Covenant on Civil and Political Rights.

[48] Action Canada submits that based on its own work, it has observed the prevalence of misinformation provided to women about their pregnancy options by anti-choice groups. Action Canada alleges that some engage in duplicitous and harassing campaigns that intimidate women considering their options. Action Canada submits that the activities of anti-choice groups are inconsistent with *Charter* values.

[49] Action Canada disputes the submission of TRTL that women and others are not harmed by being exposed to the graphic literature of pro-life groups. Action Canada notes that those in a vulnerable state can be influenced.

(2) BC Civil Liberties Association

[50] BCCLA intervenes for the limited purpose of making submissions about the possible guidance from US constitutional principles regarding freedom of speech and expression and how these principles may inform Canadian jurisprudence.

[51] BCCLA notes that it disagrees with the views of TRTL on access to abortion; however, it also opposes measures that interfere with freedom of expression and the peaceful expression of alternative views.

[52] BCCLA characterizes the Attestation as a condition that requires applicants to attest that they adopt the Government's view. BCCLA notes that in the US experience, such attestations, oaths or pledges as a condition of funding have in some cases been held to violate freedom of speech. BCCLA submits that if the effect of the Attestation is found to suppress free speech, the Court should consider American jurisprudence that addresses the "unconstitutional conditions doctrine."

[53] BCCLA submits that the Supreme Court of Canada has acknowledged, in *R v Simmons*, [1988] 2 SCR 495, 55 DLR (4th) 673, and *R v Keegstra*, [1990] 3 SCR 697, 114 AR 81, that US jurisprudence on constitutional freedoms can provide guidance to Canadian courts because of the

long experience with these issues in the US. BCCLA submits that although Canadian jurisprudence has since been developed, US jurisprudence may provide guidance.

[54] BCCLA notes that the Supreme Court of Canada considered US jurisprudence on compelled speech and how it may be persuasive in *Lavigne v Ontario Public Service Employees Union*, [1991] 2 SCR 211 at 274–76, 81 DLR (4th) 545 [*Lavigne*], which is relied on by the Applicants.

[55] BCCLA cites particular US decisions and notes, more generally, that many US judgments are consistent with Canadian jurisprudence that holds that there is no right to government funding (e.g., *Rust v Sullivan*, 500 US 173 (1991)). Governments can support or subsidize some opinions to the exclusion of others. However, US jurisprudence makes a distinction between programs directed at promoting certain views and conditions that limit freedom of expression for reasons unrelated to the purpose of the program (e.g., *Perry v Sindermann*, 408 US 593 (1972)).

[56] BCCLA submits that the Attestation at issue appears to be a form of compelled speech not directly connected to the purpose of the funding.

[57] BCCLA submits that it would be permissible to attach a condition to the job that is funded by the grant, but questions whether it is permissible to include the core mandate in the Attestation.

III. The Issues

[58] The Respondent raises the preliminary issue of whether Mr. Alleyne and Mr. Battista have standing as individuals to bring this Application or whether the only Applicant should be TRTL, with Mr. Alleyne's involvement limited to his role as the president and a member of the organization.

[59] With respect to the merits of the Application, the overarching issue is whether the Minister's decision to add the Attestation as a new eligibility requirement was reasonable. This entails consideration of the following issues:

- Whether the decision to add the Attestation is *ultra vires* the DESDA;
- Whether the decision to add the Attestation was made in bad faith because it was made for an improper purpose or based on irrelevant considerations; and
- Whether the decision to add the Attestation was made with bias or a closed mind.

[60] In the event that the Court finds that the Attestation is *ultra vires* based on the administrative law arguments advanced, the Court need not consider the *Charter* issues raised (*Taseko Mines Limited v Canada (Environment)*, 2019 FCA 320 at para 105). In the event that the Court finds that the purpose of the Attestation is not *ultra vires*, the Court must consider the effects of the Attestation. The issue becomes whether the Attestation engaged the Applicants' *Charter* rights protected by sections 2(a), 2(b) and 15, and if so, whether in deciding to add the

Attestation, the Minister proportionately balanced the *Charter* rights and protections at play with the objectives of the DESDA and the CSJ program.

IV. The Standard of Review

[61] The reasonableness standard is the presumptive standard of review for administrative decisions, including decisions of Ministers, and applies to the majority of the issues noted above (*Vavilov*).

[62] In *Vavilov*, the Supreme Court of Canada provided extensive guidance to the courts in reviewing a decision for reasonableness, noting that a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–10). The Court does not assess the reasons against a standard of perfection (*Vavilov* at para 91).

[63] In *Vavilov*, the Supreme Court of Canada explained that decisions should not be set aside unless there are “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” and that “[t]he court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” [Emphasis added] (*Vavilov* at para 100).

[64] The Applicants’ allegations of bad faith and bias or closed mind are issues of procedural fairness that are reviewed on the standard of correctness. As noted in *Canadian Pacific Railway*

Company v Canada (Attorney General), 2018 FCA 69 at paras 54–55, correctness is not so much a standard of review as an assessment of whether the process was fair having regard to all the circumstances.

[65] If the Court determines that the Minister’s decision to add the Attestation engages the Applicants’ *Charter* rights, the reasonableness standard applies to determine whether the Attestation reflects a proportionate balancing between the relevant *Charter* protections at play and the statutory objectives of the DESDA and the CSJ program to ensure that the right is limited no more than necessary (*Doré*; *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*]). A decision that reflects a proportionate balancing of *Charter* rights and values is a reasonable decision.

[66] In *Vavilov*, at para 57, the Supreme Court expressly stated that it was not displacing the standard of review set out in *Doré*.

V. Preliminary Issue: Mr. Alleyne Has Direct Standing

[67] The Respondent’s position is that TRTL is the only applicant with standing. The Respondent argues that neither Mr. Alleyne nor Mr. Battista has established that the Attestation affected their legal rights, imposed legal obligations on them, or prejudicially affected them in some personal way (*Bernard v Close*, 2017 FCA 52 at para 2 [*Bernard*]). The Respondent also argues that they do not have a genuine interest in the matter (*Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para 37).

[68] The Applicants' position is that both Mr. Alleyne and Mr. Battista have direct standing as individuals because they have been prejudicially affected. The Applicants argue that by signing the Attestation on behalf of TRTL, Mr. Alleyne would be required to attest to a view that he does not hold and which is contrary to his strongly held religious belief. The Applicants submit that Mr. Battista's opportunity for employment in the summer of 2018 was prejudicially affected by the Attestation requirement.

[69] Individuals have direct standing to challenge a decision where the decision directly affects them (subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7); where the decision affects their legal rights, imposes legal obligations upon them, or prejudicially affects them (*Bernard* at para 2, citing *League for Human Rights of B'Nai Brith Canada v Odynsky*, 2010 FCA 307 at para 58; *Dow v Canadian Nuclear Safety Commission*, 2020 FC 376 at para 9).

[70] I find that the Applicants have established that Mr. Alleyne has direct standing. At the relevant time, Mr. Alleyne was a member of and president of TRTL. He applied for funding on behalf of TRTL and would have been required to make the Attestation on behalf of TRTL. He attested that his "conscience does not allow [him] to sign the attestation". Mr. Alleyne explained that he is faithful to the teachings of the Catholic Church, which teaches that human life must be respected and protected from conception. The Respondent's view—that Mr. Alleyne's legal rights and obligations were not affected by either signing or not signing the Attestation and that he was not prejudicially affected in his personal capacity—overlooks that Mr. Alleyne was the public face of TRTL. The organization could not submit an application for funding without a representative signing the Attestation. Mr. Alleyne explained that neither he nor other members

of TRTL could make the Attestation, which in their view is inconsistent with their strongly held beliefs. In my view, as the face of TRTL, Mr. Alleyne's personal views and beliefs are aligned with the beliefs and values of TRTL and *vice versa*, and he would be prejudicially affected by making the Attestation.

[71] The Applicants have not established that Mr. Battista was directly affected or prejudiced by the Attestation. Although Mr. Battista attested that he would have, or hoped to, seek employment with TRTL in 2018, noting that he had worked in previous summers, there is no evidence regarding whether TRTL had other sources of funds to employ Mr. Battista or whether he was employed in 2018 regardless of the lack of funding from the CSJ program. Mr. Battista was not required to make the Attestation as a representative of TRTL. Unlike Mr. Alleyne, he was not the public face or official representative of TRTL.

VI. Was the Decision to Add the Attestation *Ultra Vires*?

A. *The Applicants' Submissions*

[72] The Applicants argue that the Attestation is *ultra vires* because its purpose is unrelated to and exceeds the statutory purposes of the DESDA.

[73] The Applicants submit that the Attestation is an attempt by the Minister to influence or affect political speech, to compel or censor speech, to regulate beliefs, or to discriminate against them on the basis of their religious beliefs. The Applicants argue that these are unconstitutional

purposes, which render the Attestation *ultra vires*. (The Applicants' *Charter*-related submissions are addressed below.)

[74] The Applicants further allege that the purpose of adding the Attestation was also to accomplish the Minister's publicly stated objective of denying funding to any "organization that works to limit women's reproductive rights" and to satisfy the demands of the Abortion Rights Coalition of Canada [ARCC].

B. *The Respondent's Submissions*

[75] The Respondent submits that the decision to add the Attestation is within the scope of the Minister's discretion and is *intra vires* the DESDA. The Respondent points to the reference to an "inclusive labour market" and "promoting social well-being" in subsection 5(2) of the DESDA. The Respondent submits that the Attestation, which ensures that funds flow only to employers that do not discriminate in their hiring and do not undermine individual human rights, helps achieve the DESDA objectives of an inclusive workforce, social development and the social well-being of vulnerable persons such as LGBTQ2 youth and underrepresented groups such as women in STEM. In addition, the DESDA requires the Minister to establish criteria that favour certain applicants over others for the benefit of all Canadians.

[76] The Respondent further argues that the Attestation did not have unconstitutional objectives. The Respondent distinguishes the Attestation from the circumstances in *R. v Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295 [*Big M*], cited by the Applicants, where the law in question (the *Lord's Day Act*) clearly had the purpose of forcing people to

observe a particular religious practice. The Respondent submits that the purpose of the Attestation is not to coerce religious beliefs or to put a particular message “in the mouth of the Applicants.” Rather, the Attestation ensures that youth job opportunities funded by the CSJ program take place in an environment that respects the rights of all Canadians.

[77] The Respondent submits that there is no evidence that TRTL was singled out or excluded. The Attestation was directed at jobs and activities, not at values and beliefs.

C. *The Attestation Is Intra Vires the DESDA*

[78] The relevant provisions of the DESDA state:

<p>5 (1) The Minister’s powers, duties and functions extend to and include all matters relating to human resources and skills development in Canada or the social development of Canada over which Parliament has jurisdiction and which are not by law assigned to any other Minister, department, board or agency of the Government of Canada.</p>	<p>5 (1) Les attributions du ministre s’étendent d’une façon générale à tous les domaines de compétence du Parlement liés aux ressources humaines et au développement des compétences au Canada ou au développement social du Canada et ne ressortissant pas de droit à d’autres ministres, ministères ou organismes fédéraux.</p>
<p>(2) The Minister shall exercise the powers and perform the duties and functions</p>	<p>(2) Ces attributions sont exercées aux fins suivantes :</p>
<p>(a) relating to human resources and skills development with a view to improving the standard of living and quality of life of all Canadians by promoting a highly skilled and mobile</p>	<p>a) s’agissant des ressources humaines et du développement des compétences, en vue de rehausser le niveau de vie de tous les Canadiens et d’améliorer leur qualité de vie</p>

workforce and an efficient and inclusive labour market; and	en faisant la promotion du développement d'une main-d'oeuvre hautement qualifiée et mobile, ainsi que d'un marché du travail efficient et favorable à l'intégration;
(b) relating to social development with a view to promoting social well-being and income security.	b) s'agissant du développement social, en vue de promouvoir le bien-être des personnes au sein de la société et la sécurité du revenu.
7 The Minister may, in exercising the powers and performing the duties and functions assigned by this Act, establish and implement programs designed to support projects or other activities that contribute to the development of the human resources of Canada and the skills of Canadians, to the social development of Canada or to service delivery to the public, and the Minister may make grants and contributions in support of the programs.	7 Le ministre peut, dans le cadre des attributions que lui confère la présente loi, concevoir et réaliser des programmes destinés à appuyer les projets ou autres activités qui contribuent au développement des ressources humaines au Canada et au développement des compétences des Canadiens, au développement social du Canada ou à la prestation de services au public, et accorder des subventions et des contributions pour appuyer ces programmes.

[79] The DESDA sets out the powers, duties and functions of the Minister in sections 5–17.

The broad powers of the Minister are set out in section 5 regarding human resources, skills development and social development. More specifically, subsection 5(2) reflects the objectives of “improving the standard of living and quality of life of all Canadians by promoting a highly skilled and mobile workforce and an efficient and inclusive labour market” and promoting social well-being and income security.

[80] Section 7 grants the Minister the authority to establish and implement programs that support the objectives set out in the DESDA, which include grants and contributions programs, such as the CSJ program. The CSJ program provides grants to non-governmental organizations that meet the specific criteria of the program, which in turn reflect the objectives of the DESDA.

[81] The parliamentary debates regarding the DESDA convey that the DESDA (and its predecessor legislation) is the governing legislation for a wide range of programs from skills development to income support, such as pensions and employment insurance. In my view, it would be impossible for the DESDA to set out the specific objectives of each existing or potential program within the mandate of the Minister. The broad language of sections 5 and 7 is necessary, as is a broad interpretation of the scope of the DESDA and the Minister's authority pursuant to it.

[82] Justice St-Louis also found, at para 17 of the Injunction Order, that the DESDA “grants broad discretion to the Minister as section 7 contains no indications as to how the programs should be construed.” She noted at para 77:

Under the authority of section 7 of the Act, the Minister may establish and implement programs designed to support projects or other activities that contribute to the development of the human resources of Canada and the skills of Canadians, or that contribute to the social development of Canada, and the Minister may make grants and contributions in support of the programs. The Act thus grants broad discretion to the Minister.

[83] As explained by the Respondent, the demand for funding from the CSJ program greatly exceeds the budget for the program. Each program year, the Minister establishes national priorities and eligibility criteria. The national priorities for the 2018 CSJ program focused on

women, the LGBTQ2 community, and underrepresented groups. The priorities were clearly set out in the 2018 Applicant Guide and other public material.

[84] The 2018 Applicant Guide noted the objectives of the program: to provide work experience for students; to support organizations, including those that provide important community services; and to recognize that local circumstances, community needs and priorities vary widely. It also stated that “[i]n delivering on these [CSJ] objectives, the Government of Canada seeks to ensure that youth job opportunities funded by the Canada Summer Jobs program take place in an environment that respects the rights of all Canadians.”

[85] The Applicant Guide noted that the Attestation is consistent with the Government of Canada’s commitment to human rights, which includes women’s rights and women’s reproductive rights, including the right to access safe and legal abortions. In addition, the Rationale noted commitments made by the Prime Minister in support of global programs on sexual and reproductive health and rights.

[86] Establishing a discretionary funding program that seeks to respect the rights of women, LGBTQ2 individuals, and minorities is clearly within the statutory objectives of the DESDA to establish and implement programs, in accordance with section 7, which reflect the broad objectives set out in subsection 5(2). The CSJ program supports projects that contribute to the development of human resources, the skills of Canadians and to the social development of Canada.

[87] Given the high volume of applications received each year, the budget, and the short time frame for the processing and approval of the funding, the addition of the Attestation as part of the eligibility criteria was within the range of options available to the Minister.

[88] The Deputy Minister's memo to the Minister, which noted that the Attestation provided "an additional means to screen out ineligible organizations—even if the projects themselves seem to respect the spirit of the *Charter* at first glance" does not support the Applicants' contention that the Government's goal was to exclude those whose views did not align with those of the Government.

[89] In addition, while the references in the Applicant Guide about the meaning of reproductive rights may suggest to the Applicants that the Minister added the Attestation to exclude pro-life groups, that was not its purpose.

[90] The evidence, including Rachel Wernick's affidavit [the Wernick Affidavit] and many of the exhibits attached thereto, demonstrates that the purpose of adding the Attestation to the eligibility requirements for the 2018 CSJ program was to prioritize funding to groups that would respect *Charter* rights and other rights and that would provide job opportunities for vulnerable groups or to those who would benefit or serve those vulnerable groups. While its effect on the Applicants may have excluded them, it was not the purpose.

D. *The Attestation Was Not Based on Irrelevant Considerations*

[91] The record shows that the Minister received complaints from ARCC, an abortion rights lobbying group, and from others who support a pro-choice approach, who asserted that funding should not be provided to pro-life groups. However, the record also shows that the Minister received complaints from pro-life groups in response. Complaints to Ministers and Members of Parliament from Canadians about how government funding is allocated are not unusual. The Minister's consideration of such correspondence in the context of establishing funding priorities or criteria can hardly be characterized as an irrelevant consideration. There is no evidence that this was the Minister's sole consideration—rather, the evidence shows that many considerations influenced the priorities of the program, including Canada's international commitments and stated policy priorities more generally.

VII. Was the Decision to Add the Attestation Made in Bad Faith Because It Was Made for an Improper Purpose or Based on Irrelevant Considerations?

A. *The Applicants' Submissions*

[92] The Applicants rely on *Roncarelli v Duplessis*, [1959] SCR 121, 1959 CanLII 50, to argue that the Minister acted in bad faith, on irrelevant considerations, and for an improper purpose because the Attestation was imposed to placate ARCC, who supports the Government's views on reproductive rights, and to further the Government's ideological commitment to the lack of any legal restrictions on abortion in Canada.

[93] The Applicants allege that the Minister hid the real motivation for the Attestation until the Court ordered disclosure of additional documents that revealed the ARCC complaints and social media posts.

[94] The Applicants also suggest that the Prime Minister's Office was "unusually" involved, noting ARCC's correspondence in June 2017 offering to meet with the Prime Minister's Office [PMO] and the PMO's acknowledgement of that correspondence.

B. *The Respondent's Submissions*

[95] The Respondent submits that there is no evidence to suggest that the Minister acted for an improper purpose or considered irrelevant factors.

[96] The Respondent submits that considering public complaints from individuals and organizations with opposing viewpoints does not demonstrate bad faith. The Respondent notes that ESDC is required to review such complaints.

C. *The Decision to Add the Attestation Was Not Made in Bad Faith*

[97] In *Freeman v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1065 at paras 23–29, Justice Mactavish (as she then was) summarized the principles relating to bad faith, including those established by the Supreme Court of Canada in *Roncarelli v Duplessis*. The relevant principles can be summarized as follows:

- Good faith is presumed; the person alleging bad faith must prove it. Neither direct evidence nor evidence of actual malice or intent to harm is required to prove bad faith. It may be inferred from the surrounding circumstances.
- Good faith means carrying out the statute according to its intent and for its purpose: i.e., acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose.
- Good faith does not mean acting for the purposes of punishing a person for exercising an unchallengeable right, or arbitrarily and illegally divesting a citizen of an incident of their civil status.
- Bad faith can include: deliberate acts; acts that are so markedly inconsistent with the relevant legislative context that a court cannot reasonably conclude that they were performed in good faith; and serious carelessness or recklessness.

[98] The decision to add the Attestation does not reflect any of the indicia of bad faith, nor can bad faith be inferred from the “surrounding circumstances.”

[99] As noted above, the Attestation is within the scope of the Minister’s authority and discretion pursuant to the broad mandate as set out in section 5 of the DESDA and pursuant to the Minister’s authority to implement programs designed to support projects that contribute to the development of human resources, skills and social development, as set out in section 7 of the DESDA. The Minister did not act for an improper purpose when she imposed the Attestation.

[100] As noted by the Respondent, ensuring that funding was targeted to employers that do not undermine individual human rights and that respect the rights of all Canadians reflects the objectives of an inclusive workforce and social development, and is not an improper purpose.

[101] The Minister did not base the decision to add the Attestation on irrelevant considerations. The views of Canadians about how CSJ funding is allocated are relevant considerations in setting out priorities, eligibility criteria and terms and conditions.

[102] The acknowledgement of correspondence from ARCC by the PMO does not establish bad faith. Although ARCC offered their “expertise and resources” to help to ensure that anti-choice groups did not benefit from future government funding, there is no evidence that any meeting ever occurred. Even if it did, meetings between politicians and lobbyists do not establish bad faith in decision-making. As noted, the Minister received complaints from both pro-choice and pro-life groups at the relevant time. The Minister and Government were aware of the polarized debate on abortion.

VIII. Did the Minister’s Decision to Add the Attestation Reflect a Closed Mind or a Reasonable Apprehension of Bias?

A. *The Applicants’ Submissions*

[103] In their Notice of Application, the Applicants plead that the addition of the Attestation was unlawful on several administrative law grounds, including a breach of procedural fairness. The Applicants more specifically submit that the Minister acted with a reasonable apprehension of bias because, in the Applicants’ view, the Attestation responded to the complaints of the ARCC and pro-choice groups.

B. *The Respondent's Submissions*

[104] The Respondent argues, first, that no duty of procedural fairness is owed to the Applicants with respect to this policy decision and, second, that there is no evidence of any bias.

[105] The Respondent submits that the proper test for any allegation of bias or lack of impartiality on the part of the Minister making a policy decision is the “closed mind” test (*Pelletier v Canada (Attorney General)*, 2008 FCA 1 at paras 49–55 [*Pelletier*]). The issue is whether the Minister’s mind was closed to opposing views.

[106] The Respondent submits that the Applicants have not pointed to any evidence to support their allegation of bias or a closed mind. The Respondent submits that the Minister did not demonstrate a closed mind by considering complaints about how CSJ funding had been allocated in the past.

C. *The Minister's Decision to Add the Attestation Does Not Reflect a Closed Mind*

[107] In *Pelletier*, the Federal Court of Appeal clarified that the duty of impartiality for Ministers making discretionary policy decisions is that of a “closed mind.” The Court noted at para 49:

In a series of decisions, the most recent being *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 2 S.C.R. 624 (*Imperial Oil Ltd.*), the Supreme Court of Canada has clearly established that the content of the duty of impartiality varies according to the functions of the administrative decision maker, and the question being decided. The content varies between those of the judiciary and administrative tribunals whose adjudicative

functions are very similar to those of the judiciary (attracting the highest standard of reasonable apprehension of bias) and those of administrative decision makers such as ministers or officials who perform policy making discretionary functions (attracting the lower standard of closed mind).

[Emphasis added]

[108] The Court explained, at para 55, that a discretionary policy decision “attracts, at best, a standard of impartiality of a closed mind.”

[109] Although the standard of a “closed mind” may be less onerous to establish than that of an apprehension of bias, it remains a high threshold to meet.

[110] As noted by Justice Brown in *Ernst v Canadian National Railway Company*, 2021 FC 16 at para 50 (although with respect to a different administrative decision maker):

An allegation of bias against an Investigator is a serious allegation and should not be made lightly. The allegation cannot be made on mere suspicion, conjecture, insinuations, or a mere impression of an applicant. The burden of demonstrating the existence of bias or a reasonable apprehension of bias rests on the person making the allegation: *Arthur v Canada (Attorney General)*, 2001 FCA 223 [Létourneau JA] at para 8 and *Hughes v Canada (Attorney General)*, 2010 FC 837 [Mactavish J as she then was] at para 21.

[111] The Applicants have not met the high threshold to establish the serious allegation of bias, whether the closed mind test or the reasonable apprehension of bias test is applied.

[112] The evidence on the record shows that the Minister’s decision to impose the Attestation was not made with a mind closed to the views of pro-life groups and only open to the views of

ARCC and other abortion rights groups as alleged by the Applicants. The decision was based on several considerations, including the government's existing and stated domestic policy and international commitments on human rights, gender equality, reproductive rights and LGBTQ2 rights. This is reflected in the Applicant Guide, Rationale, and several other documents generated from discussions within ESDC and Parliament as noted in and attached to the Wernick Affidavit.

D. *The Applicants Have Not Established Any Other Breach of Procedural Fairness*

[113] The Applicants' general allegation of a breach of procedural fairness, which they did not elaborate on, is without merit.

[114] In *Canadian Arab Federation v Canada (Citizenship and Immigration)*, 2013 FC 1283 [CAF], aff'd 2015 FCA 168, Justice Zinn found that no duty of procedural fairness was owed in the context of a decision not to renew a contribution agreement, noting at para 38:

Finally, according procedural rights in what is essentially a strictly commercial context would unduly burden the Minister, particularly where the window for making a decision is short and there are greater public policy considerations which the Minister must weigh. In such a context, the parties' rights are best protected by a reviewing court's assessment of the reasonableness of the decision, not by extending procedural rights where none would otherwise exist.

[115] In the present case, the issue is whether any duty of procedural fairness was owed with respect to the policy decision to impose the Attestation, not to a decision to refuse funding. Given that in *CAF*, the Court found that no duty of procedural fairness was owed to an applicant with respect to the Minister's refusal to extend a funding agreement, there would be no duty of procedural fairness owed to a potential applicant regarding the broader policy decision to

establish the program and its funding criteria. In addition, the factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193, which inform whether a duty of procedural fairness exists, do not support finding any general duty of procedural fairness to the Applicants with respect to the decision to add the Attestation.

IX. Does the Attestation Engage the Applicants' Sections 2(a), 2(b), and 15 Charter Rights? If So, Does the Attestation Reflect a Proportionate Balancing of the Charter Rights and Protections at Play with the Objectives of the DESDA and the CSJ Program?

A. *The Applicants' Submissions*

[116] The Applicants submit that even if the purpose of the Attestation was not unconstitutional, the effects of the Attestation infringed their *Charter* rights to freedom of speech, freedom of religion and equality significantly and disproportionately to the statutory objectives.

[117] The Applicants argue that the Attestation amounts to compelled speech, contrary to section 2(b) of the *Charter*. They argue, citing the factors set out in *Lavigne*, that: the Attestation compels TRTL and Mr. Alleyne to say that they agree with the pro-choice view in order to be treated equally; they must publicly identify with a message supporting abortion; and they have no ability to disavow that message.

[118] The Applicants also argue that the Attestation coerces a religious belief because it requires them to make the Attestation contrary to their religious beliefs or conscience, in contravention of section 2(a) of the *Charter*. The Applicants submit that their sincere pro-life

belief has a nexus with religion and that the Attestation interferes with their freedom of religion in a non-trivial way. The Applicants point to the affidavit of Dr. John Berkman, who explains that the belief in the sanctity of life is founded on the traditions of Catholicism.

[119] The Applicants submit that TRTL is both an educational and religious-based organization; its mandate is to educate and advocate with respect to the sanctity of life. The Applicants add that the reference to the “sanctity of life” in its Letters Patent is clearly a reference to its religious beliefs. The Applicants submit that TRTL and its members cannot attest to an opposing belief.

[120] The Applicants dispute that the *Charter* infringements can be excused because TRTL is not obliged to seek the funding in the first place. They rely on the US jurisprudence in *Perry v Sindermann*, where the US Supreme Court found that while there is no right to a government benefit, its denial for reasons of expression of a particular belief is contrary to the US Constitution.

[121] The Applicants also argue that the Attestation results in discrimination on the basis of religion, contrary to section 15 of the *Charter*. The Applicants submit that the Attestation makes a distinction between Mr. Alleyne and Mr. Battista and others based on their religious beliefs and their membership in a group whose religious beliefs prevent it and its members from making this Attestation. The Applicants add that the Attestation has a discriminatory effect because it imposes a disadvantage on Mr. Alleyne and Mr. Battista. Mr. Alleyne’s organization—TRTL—

was denied consideration for funding because he could not attest to a view contrary to his religious beliefs. Mr. Battista was denied a potential job opportunity.

[122] The Applicants further submit that this distinction perpetuates a disadvantage, including the stereotypes about their organization and pro-life organizations in general. The Applicants also point to Mr. Alleyne's affidavit in which he attests that he was harassed and assaulted. The Applicants argue that they need not submit any particular type of evidence to establish the disadvantage (*Fraser v Canada (AG)*, 2020 SCC 28 at paras 57–59 [*Fraser*]).

[123] The Applicants submit that the Attestation denies them completely of the benefit of the CSJ program, which they allege is a program of general application, without any accommodation. They add that the deleterious effects on their freedom of expression, freedom of religion and equality are disproportionate to any possible salutary effects related to the achievement of the Minister's statutory objectives.

B. *The Respondent's Submissions*

[124] The Respondent submits that the Applicants have not established that the Attestation compels speech, infringes freedom of religion or discriminates against them based on religion or other protected grounds. Alternatively, if the Applicants' *Charter* rights were engaged, the Attestation balanced the *Charter* rights at play with the objectives of the DESDA and the 2018 CSJ program.

[125] The Respondent contends that the Attestation does not relate to an applicant organization's beliefs and values. The Respondent reiterates that the Applicants' misunderstanding cannot be the basis for a finding of unconstitutionality. The Respondent submits that the Attestation only confirms that an applicant's primary activities and jobs do not seek to undermine human rights, in order to ensure that the organizations receiving funds respect the rights of all Canadians. The Respondent contends that the Attestation does not require TRTL to state that it agrees with the pro-choice view.

[126] With respect to section 2(b), freedom of expression, the Respondent argues that the Attestation does not associate TRTL with a message that it disagrees with. The Respondent notes that Mr. Alleyne stated that TRTL agrees with upholding the law and the *Charter*.

[127] The Respondent submits that the *Lavigne* factors are not at play. There is no right to funding, no requirement to apply for funding and, in turn, no compulsion to make the Attestation. The Respondent notes that TRTL did not make the Attestation; therefore, no speech was compelled from TRTL or Mr. Alleyne personally. In addition, TRTL had an opportunity to disavow the Attestation or their understanding of it. TRTL and Mr. Alleyne were not restricted in expressing their pro-life views and continue to do so.

[128] With respect to section 2(a), freedom of religion, the Respondent submits that the Attestation did not create a religious-based distinction or exclude religious groups from applying for funding.

[129] The Respondent also submits that the Applicants have not demonstrated that TRTL is a religious group or organization.

[130] The Respondent argues that the Applicants have failed to provide objective evidence to support their assertion that the Attestation interfered with a sincere belief that has a nexus to religion in a non-trivial manner. The Respondent submits that the Applicants' perception and speculation is not enough. The Respondent notes that TRTL is free to express and practice their religious views and that they continue to do so.

[131] With respect to the Applicants' section 15 claim of discrimination based on religion, the Respondent submits, first, that equality rights belong only to individuals. The Respondent again submits that the individual rights of Mr. Alleyne or Mr. Battista were not engaged.

[132] Second, the Respondent submits that TRTL is not a religious organization, noting that it describes itself as a "non-sectarian human rights organization" whose mandate is to educate and promote pro-life views. The Respondent submits that holding a pro-life view is not a protected or analogous ground of discrimination.

[133] Third, the Respondent argues that the Attestation did not create any religious-based distinction or exclude religious groups from applying for funding. The Respondent points to the 2018 Applicant Guide that clearly stated that religious organizations were not excluded from applying.

[134] Fourth, the Respondent argues that the Applicants have not provided any objective evidence that the Attestation infringed the equality rights of Mr. Alleyne or Mr. Battista. The Applicants have not demonstrated, as required by *Fraser* at para 50, that the Attestation created a distinction on an enumerated or analogous ground and that the distinction imposed burdens on them or denied them benefits in a manner that perpetuated disadvantage.

[135] The Respondent submits that even if TRTL is characterized as a religious group, and Mr. Alleyne and Mr. Battista are part of that group, the Applicants have not demonstrated a differential impact. Rather, the Applicants only speculate that if TRTL were denied funding for two summer student jobs, their ability to provide job opportunities would be limited.

[136] The Respondent submits that contrary to the Applicants' reliance on *Fraser* to argue that they need not provide any particular type of evidence to establish disadvantage, the Applicants are required to provide sufficient evidence.

[137] With respect to proportionality, the Respondent argues that if the Attestation limited the Applicants' *Charter* rights, the limitation was minimal and reasonable as it reflected a proportionate balancing of the *Charter* protections at issue against the objectives of the DESDA and the CSJ program.

[138] The Respondent submits that the Minister balanced freedom of expression and religion with the objective of promoting gender equality by focusing the Attestation on an organization's primary activities, not its beliefs or values. The Respondent further submits that *Charter* rights

and human rights, including gender equality and prioritizing LGBTQ2 rights, underpinned the 2018 CSJ program objectives and the Attestation. The Respondent explains that women's autonomy over their bodies is essential to gender equality; reproductive rights are essential to women's autonomy over their bodies; and access to safe and legal abortion is part of reproductive rights. Organizations that work to undermine a woman's right to abortion negatively impact women and society. The Respondent submits that providing funding to organizations that undermine a woman's access to abortion legitimizes these activities.

[139] The Respondent points to the evidence of Dr. Amy Kaler, who attested to the importance of women's bodily autonomy to gender equality and full participation in society. The Respondent also points to the evidence of Dr. Barry Adam, who attested to the negative impacts of employment discrimination on LGBTQ2 youth. The Respondent notes that this and other evidence supports the reasonableness of the Minister's policy decision to introduce the Attestation and in balancing the *Charter* protections at play against its objectives.

C. *The Limitation on the Applicants' Charter Rights Reflects a Proportionate Balancing with the Statutory Objectives; The Decision to Add the Attestation was Reasonable*

(1) Overview

[140] The purpose of the Attestation is not *ultra vires* the DESDA. The purpose of the Attestation is not to infringe *Charter* rights, but rather to broadly promote *Charter* rights and values and human rights.

[141] However, I find that the effects of the Attestation do engage the Applicants' section 2(a) and 2(b) rights. The effects of the Attestation do not engage the Applicants' section 15 right to equality. I also find that the decision to add the Attestation reflects a proportionate balancing of the *Charter* rights at play with the objectives of the DESDA and the 2018 CSJ program, which itself seeks to protect and promote *Charter* rights and values. While true proportionality may be elusive, the record shows that many considerations were taken into account in the decision to add the Attestation, including its effects on pro-life and faith-based groups. While the Minister could have chosen other options to enhance the eligibility criteria, the Attestation was a reasonable option that sought to highlight the priorities for funding and the overall objectives of the CSJ program while addressing its rights-limiting impacts on some would-be applicants. The Minister's policy decision is owed deference and there is no basis to interfere. The proportionate balancing demonstrates a reasonable decision.

(2) Section 2(a) Freedom of Religion Engaged

[142] The test for whether a section 2(a) right is engaged was restated by the Supreme Court in *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32:

[62] This Court has adopted a broad and purposive approach to interpreting freedom of religion under the *Charter*. This encompasses “the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination” (*R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295, at p. 336).

[63] Section 2(a) of the *Charter* is limited when the claimant demonstrates two things: first, that he or she sincerely believes in a practice or belief that has a nexus with religion; and second, that the impugned state conduct interferes, in a manner that is more than trivial or insubstantial, with his or her ability to act in

accordance with that practice or belief (*Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551, at para. 65; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386, at para. 68). If, based on this test, s. 2(a) is not engaged, there is nothing to balance.

[143] In *Loyola* at paras 91–92, the Supreme Court (in the concurring reasons) confirmed that organizations may rely on section 2(a) because religious freedom “has both an individual and a collective dimension.”

[144] Mr. Alleyne attests that he holds sincere religious beliefs and, as a matter of conscience and religion, he is morally opposed to abortion. Mr. Alleyne attests that his own views on the sanctity of life, the views of the members of TRTL, and the mandate and core activities of TRTL are all grounded in the teaching of the Catholic Church. The affidavit of Dr. Berkman explains how Catholicism reflects, practices and protects the sanctity of life.

[145] While TRTL describes itself as non-sectarian and it is primarily a pro-life organization, its mandate and underlying values have a nexus with religion.

[146] With respect to the Respondent’s submission that the Applicants have not adduced any objective evidence of a non-trivial interference with religion, I find that the affidavit of Mr. Alleyne, on behalf of and as a member and president of TRTL, stating that he could not check the box without violating his personal moral and religious beliefs about abortion or the core beliefs of TRTL, provides sufficient evidence. Although TRTL was not required to seek CSJ program funding, they wanted to do so. Making the Attestation would be antithetical to and

an interference with the religious beliefs underlying the mandate and activities of TRTL and the religious beliefs of Mr. Alleyne. The Attestation interferes with Mr. Alleyne's ability to act in accordance with his beliefs. He could not—credibly or morally—take a different view.

[147] Although TRTL and Mr. Alleyne are not prevented from practicing their religion or sharing their religious beliefs more generally, the broad approach to the interpretation of freedom of religion supports the finding that there was an interference with the Applicants' ability to act in accordance with their religious beliefs, albeit in the limited context of applying for funding from the 2018 CSJ program.

(3) Section 2(b) Freedom of Speech Engaged

[148] Freedom of expression protects the right to express oneself and the right not to express oneself (*National Bank of Canada v Retail Clerks' International Union*, [1984] 1 SCR 269 at 296, 1984 CanLII 2).

[149] In *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, 1989 CanLII 87 [*Irwin Toy*], the Supreme Court of Canada found that in assessing whether a law infringes freedom of expression, the first determination is whether the activity falls within the protected sphere of freedom of expression, and the second determination is whether the purpose or effect of the law restricts expression.

[150] The Attestation is a form of expression with expressive content (i.e., respect for reproductive rights, which includes access to abortion) and can be considered a form of

compelled speech as applicants must agree or adopt the message; otherwise their application for funding is not assessed. Although the purpose of the Attestation was not to compel speech or expression, the *effect* of the Attestation on the Applicants was a form of compelled speech. The Applicants understood the message. The Applicant Guide repeatedly stated that respect for reproductive rights includes the right to access safe and legal abortions.

[151] The parties agree that the factors set out in *Lavigne*—public identification with the message and the opportunity to disavow it—are relevant to determine whether compelled speech infringes section 2(b).

[152] In *Lavigne* at page 267, Justice Wilson found that *Irwin Toy* applied to compelled speech, noting:

If the government's purpose was to put a particular message into the mouth of the plaintiff, as is metaphorically alleged to be the case here, the action giving effect to that purpose will run afoul of s. 2 (b). If, on the other hand, the government's purpose was otherwise but the effect of its action was to infringe the plaintiff's right of free expression, then the plaintiff must take the further step and demonstrate that such effect warrants constitutional disapprobation. It seems to me therefore that the interpretive approach established in *Irwin Toy* readily lends itself to the analysis of claims based on compelled expression and I will follow it in my approach to s. 2 (b) in this case.

[153] Justice Wilson elaborated on the opportunity to disavow the compelled expression, at pages 279–80:

Quite apart from these [US] decisions it would be my view that as a matter of principle concerns over public identification and opportunity to disavow should form part of the s. 2(b) calculus. I have only one reservation and that is that care should be exercised in considering whether or not one truly has the opportunity to

disavow. Opportunity must be meaningful and we should not be too quick to ascribe to persons opportunities and abilities which they do not really possess. That aside, I favour the inclusion of these factors because both are directed to preserving and promoting the fundamental purpose of the s. 2(b) guarantee, namely to ensure that everyone has a meaningful opportunity to express themselves. If a law does not really deprive one of the ability to speak one's mind or does not effectively associate one with a message with which one disagrees, it is difficult to see how one's right to pursue truth, participate in the community, or fulfil oneself is denied.

[154] As the Respondent notes, no one was required to make the Attestation because no one was required to seek funding. However, all applicants who did seek funding were required to make the Attestation. The experience of TRTL was that there was no alternative wording or exception.

[155] In addition, as the Respondent notes, applicants who made the Attestation were not prevented from expressing their views in other fora, whatever their views may have been and even if they differed from the message in the Attestation. However, from a practical perspective, expressing a contrary view would call into question the honesty and credibility of the organization. Although TRTL could and does publicly denounce the pro-choice view and continues to publicly share and advocate pro-life messages, TRTL could not practically and credibly make the Attestation in the first place as it would have associated or identified TRTL with the view that respect for reproductive rights includes access to safe and legal abortions, which is a message it does not promote. In these circumstances, TRTL would not have had a real opportunity to disavow the Attestation.

[156] Based on a broad interpretation of section 2(b), I find that the Attestation engaged the Applicants' right to freedom of expression. Although the Applicants are otherwise free to express their pro-life or anti-abortion views, in order to be eligible for 2018 CSJ funding the Applicants were required to make the Attestation (along with meeting several other criteria).

(4) Section 15 Equality Rights Not Engaged

[157] In *Fraser*, the Supreme Court of Canada restated the test for a section 15 claim and provided guidance about how such claims should be determined and the nature of the evidence that courts may consider, noting at para 27:

To prove a *prima facie* violation of s. 15(1), a claimant must demonstrate that the impugned law or state action:

- on its face or in its impact, creates a distinction based on enumerated or analogous grounds; and
- imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

(Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, [2018] 1 S.C.R. 464, at para. 25; *Centrale des syndicats du Québec v. Quebec (Attorney General)*, [2018] 1 S.C.R. 522, at para. 22.)

[158] At para 81, the Court stated:

In sum, then, the first stage of the s. 15 test is about establishing that the law imposes differential treatment based on protected grounds, either explicitly or through adverse impact. At the second stage, the Court asks whether it has the effect of reinforcing, perpetuating, or exacerbating disadvantage (*Alliance*, at para. 25).

[159] As noted, the Applicants' position is that the Attestation creates a distinction for members of TRTL, including Mr. Alleyne, based on their beliefs on the sanctity of life, which is rooted in their sincerely held religious beliefs and, therefore, is protected under section 15.

[160] I find that Mr. Alleyne's right to equality is not engaged.

[161] Although TRTL describes itself in various ways, it is primarily a pro-life group. Mr. Alleyne attests that TRTL is a volunteer non-sectarian human rights organization and that its mandate is to educate about pro-life issues through educational presentations and events and distribution of educational information. I acknowledge that TRTL's message or mission is to uphold the sacredness of life from conception to death. As Dr. Berkman explains, this is rooted in Catholicism. The mandate of TRTL and its underlying values have a nexus with religion. However, in my view, TRTL should not be characterized as primarily a religious organization.

[162] Holding pro-life views or being a member of a group that holds pro-life views is not a protected or analogous ground pursuant to section 15.

[163] I would characterize TRTL as a hybrid organization given that its pro-life mandate has a nexus with religion. To the extent that this characterization opens the door to a claim of discrimination based on religion, the issue becomes whether the Attestation has a disproportionate impact on the members of this group (*Fraser* at para 52).

[164] The purpose of the Attestation is not to create a distinction based on religion. There is no impediment for religious or faith-based groups to be eligible for funding from the CSJ program based on religion. The Applicant Guide expressly states that “churches, religious and faith-based organizations” are eligible to apply and “that an organization is affiliated with a religion does not itself constitute ineligibility for this program.” ESDC also issued supplementary information, including directly to the Applicants, which set out several hypothetical examples of faith-based groups that would be eligible if they made the Attestation.

[165] Although there may be circumstances where religious and faith-based groups could apply and make the Attestation without contradicting their beliefs, the Applicants submit that their members cannot do so because their pro-life views are based on their religious beliefs. The effect or impact of the Attestation on Mr. Alleyne as a member of TRTL would, in their view, create a distinction based on religion because Mr. Alleyne could not make the Attestation on behalf of TRTL and, as a result, TRTL could not be considered for funding. The members of TRTL, including Mr. Alleyne, could be indirectly affected, albeit to a very limited extent, by TRTL’s inability to seek funding.

[166] The evidence demonstrates that Mr. Alleyne identifies himself as a member of a group whose religious beliefs in the sanctity of life prevent him from making the Attestation. As a result, the group he belongs to cannot be eligible for CSJ funding. As such, a differential impact based on religion could result. However, if characterized as a differential impact based on religion, the Applicants have not established that the Attestation perpetuates or exacerbates a disadvantage faced by Mr. Alleyne or other members of this religious group.

[167] A distinction or differential treatment is not enough to base a section 15 claim. The Applicants must also demonstrate that the distinction has the effect of reinforcing, perpetuating or exacerbating a disadvantage. As the Supreme Court noted in *Fraser* at para 76:

This brings us to the second step of the s. 15 test: whether the law has the effect of reinforcing, perpetuating, or exacerbating disadvantage (*Alliance*, at para. 25). This inquiry will usually proceed similarly in cases of disparate impact and explicit discrimination. There is no “rigid template” of factors relevant to this inquiry (*Quebec v. A*, at para. 331, quoting *Withler*, at para. 66). The goal is to examine the impact of the harm caused to the affected group. The harm may include “[e]conomic exclusion or disadvantage, [s]ocial exclusion . . . [p]sychological harms . . . [p]hysical harms . . . [or] [p]olitical exclusion”, and must be viewed in light of any systemic or historical disadvantages faced by the claimant group (Sheppard (2010), at pp. 62-63 (emphasis deleted)).

[168] The Applicants have not established that the Attestation has the effect of reinforcing, perpetuating, or exacerbating a disadvantage on Mr. Alleyne as a member of TRTL as a religious group when viewed in light of any systemic or historical disadvantages.

[169] In *Fraser* at paras 56–61, the SCC described the type of evidence that would be helpful in proving that a law (or other state action, such as the CSJ program) has a disproportionate impact on a protected group. The Court noted at para 56 that the first type of evidence is about the situation of the group and the second is about the results of the law or state action. The Court added, at paras 60–61, that claims of adverse effects discrimination should be supported by both types of evidence, although this would not be required in all cases, for example, where the impact is apparent and immediate.

[170] Although the Applicants argue that, in accordance with *Fraser*, they need not provide any particular type of evidence to establish the perpetuation of disadvantage and that anecdotal and personal evidence is sufficient, the Applicants have not provided sufficient—or any—evidence of harm or systemic or historical disadvantages faced by them as a religious group or based on religion that would be exacerbated by this Attestation.

[171] As noted by the Respondent, although TRTL asserts that they are stigmatized—as a pro-life group—there is insufficient evidence of disadvantage and no evidence of disadvantage vis-à-vis the CSJ program or other government funding.

[172] The assault experienced by Mr. Alleyne, although reprehensible, is not sufficient to show that Mr. Alleyne, as a member of a religious group, has been disadvantaged and does not in any way show that he or the group has been disadvantaged in receiving funding from government programs. The Applicants' submission that TRTL has been stigmatized for promoting the sanctity of life does not establish, to my satisfaction, that there is a systemic or historical disadvantage that would be perpetuated by the addition of the Attestation to the 2018 CSJ program.

[173] The impact on Mr. Alleyne and TRTL was limited to being prevented from having TRTL's application for one-time funding from the 2018 CSJ program considered. Mr. Alleyne's rights to equality were not affected in any other way.

(5) Proportionality

[174] Given that the Court finds that the Applicants' sections 2(a) and 2(b) rights are engaged, the next step is to determine whether the decision to add the Attestation reflects a proportionate balancing of the limitations on these *Charter* rights and the objectives of the DESDA in accordance with the framework established in *Doré*.

[175] In *Doré*, the Supreme Court of Canada described the balancing required by the decision-maker and the role of the Court on judicial review:

[56] Then the decision-maker should ask how the *Charter* value at issue will best be protected in view of the statutory objectives. This is at the core of the proportionality exercise, and requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives. This is where the role of judicial review for reasonableness aligns with the one applied in the *Oakes* context. As this Court recognized in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 160, “courts must accord some leeway to the legislator” in the *Charter* balancing exercise, and the proportionality test will be satisfied if the measure “falls within a range of reasonable alternatives”. The same is true in the context of a review of an administrative decision for reasonableness, where decision-makers are entitled to a measure of deference so long as the decision, in the words of *Dunsmuir*, “falls within a range of possible, acceptable outcomes” (para. 47).

[57] On judicial review, the question becomes whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play. As LeBel J. noted in *Multani*, when a court is faced with reviewing an administrative decision that implicates *Charter* rights, “[t]he issue becomes one of proportionality” (para. 155), and calls for integrating the spirit of s. 1 into judicial review. Though this judicial review is conducted within the administrative framework, there is nonetheless conceptual harmony between a reasonableness review and the *Oakes* framework, since both contemplate giving a “margin of

appreciation”, or deference, to administrative and legislative bodies in balancing *Charter* values against broader objectives.

[176] In *Loyola*, the Supreme Court of Canada reiterated and applied the *Doré* framework, noting, at para 41, that the *Doré* analysis is a highly contextual exercise.

[177] I would summarize the guidance from *Doré* and *Loyola* regarding the Court’s role on judicial review as follows:

- On judicial review, the Court assesses whether the decision-maker followed the approach described in *Doré*; i.e., whether the decision reflects a proportionate balancing of the *Charter*-protected rights at play, taking into consideration the impact on those affected, as well as the nature of the decision and the statutory and factual context.
- A proportionate balancing is one that gives effect, as fully as possible, to the *Charter* protections at play. Looked at from the other perspective, this means that the *Charter* protections at play should be affected as little as reasonably possible in light of the statutory objectives (this mirrors the minimal impairment aspect of the *Oakes* test).
- There may be more than one proportionate outcome. A “margin of appreciation” or deference is given to the decision-maker in balancing *Charter* protections and values against broader objectives.

[178] In the present case, the statutory objectives of the DESDA are to implement programs that support projects that contribute to human resources, skills development, social development and service delivery (section 7) with a view to improving the standard of living and quality of

life of all Canadians by promoting, among other things, an inclusive labour market, social well-being and income security (section 5). As noted above, the Minister has broad discretion to develop and implement programs, such as the CSJ program. The objectives of the CSJ program aim to protect the human rights and *Charter* rights of program beneficiaries, including employers and young summer employees and those they serve.

[179] The record, notably the Wernick Affidavit and the exhibits attached thereto, demonstrates that the Minister considered the impact on the *Charter* rights of program applicants, including pro-life, religious, and faith-based groups, in light of the statutory objectives of the DESDA and the 2018 CSJ program. Ms. Wernick's affidavit traces the development of the 2018 CSJ program and the inclusion of the Attestation. She described the 2018 CSJ program, including its objectives, budget, allocation of funding in electoral districts, need for annual criteria and the process that led to the Minister's decision to add the Attestation. Ms. Wernick also attached several exhibits related to the program, including the Information Kit prepared for Members of Parliament, the list of organizations that received funds from the program in 2017, the 2018 Applicant Guide, the Applicant Guides for previous years and news releases regarding the program.

[180] Ms. Wernick explains, among other things, that the CSJ program is a discretionary annual program. Each year, the Minister decides whether to offer the CSJ program. The priorities, eligibility and assessment criteria for the CSJ program are outlined in the Applicant Guide. The 2018 Applicant Guide indicates that the CSJ program supported five national priorities: small businesses; organizations that intend to hire youth in underrepresented groups; organizations that

provide services and supports for the LGBTQ2 community; organizations that support women in STEM; and organizations that support official language minority communities.

[181] Ms. Wernick explains that in 2017, the Minister received complaints that some CSJ funding had been provided to organizations that allegedly limited women's reproductive rights and restricted the participation of LGBTQ2 youth. Ms. Wernick attaches several exhibits that support the basis of the complaints. Ms. Wernick adds that due to the public complaints and the objective of the CSJ program to prioritize initiatives for youth with barriers to the labour market, ESDC explored how to ensure that youth who benefitted from the program would not be placed in jobs with organizations that do not respect *Charter* values and individual human rights. Three options for a new eligibility requirement were considered: the review of all CSJ applications individually by ESDC to determine whether they met the eligibility requirement; an attestation by MPs that the job opportunities in their electoral ridings met the eligibility requirement; and an attestation by the applicant for funding that they complied with the eligibility requirement.

[182] Ms. Wernick adds that the Attestation for applicants was recommended to and approved by the Minister. She notes that the high volume of applications for funding and the very short time period in which each had to be assessed were important considerations in placing the obligation on the applicant at the very first stage as a prerequisite for funding.

[183] Ms. Wernick also explains that ESDC considered the need to respect freedom of speech and freedom of religion and noted the possibility that religious organizations might exclude themselves from the CSJ program despite meeting the eligibility requirements. Ms. Wernick

explains that the Applicant Guide included the note indicating, “[t]hat an organization is affiliated with a religion does not itself constitute ineligibility for this program” to address this issue.

[184] The development of the 2018 CSJ program as described by Ms. Wernick supports the conclusion that the Minister considered how to best protect the possible limitation on the rights of some would-be applicants. The Applicant Guide’s notation that faith-based groups remained eligible and the hypothetical examples, which included reference to pro-life groups as recipients, reflects that the Minister sought to lessen the impact by explaining how such groups could remain eligible. Moreover, the Attestation itself sought to ensure that the organizations receiving funding respected the *Charter* rights and values so that the rights of a broader group—employers, summer employees and others served by the projects funded—would be respected and promoted.

[185] As noted in *Doré* and *Loyola*, the impact of the limitation on *Charter* rights and values must be considered in the appropriate factual context. In the present case, this includes the consideration that the CSJ program is an annual discretionary program that is oversubscribed each year. ESDC is required to assess thousands (approximately 42,500 applications in 2018) within a month’s time. The DESDA grants the Minister broad discretion to establish the program and its priorities, terms and conditions. The Rationale for the Attestation notes that “this change helps to ensure that youth job opportunities . . . take place in an environment that respects the rights of all Canadians.” The decision to add the Attestation—to ensure that the priorities were reflected and the *Charter* and other rights of program beneficiaries were respected—after

considering other options and after considering the relevant *Charter* protections at play, reflects a proportionate balancing.

[186] Although the Applicants argue that their rights were not minimally impaired because they were completely excluded from funding, the funding at issue was only for summer 2018.

Moreover, funding for TRTL was not a certainty given the other eligibility criteria and the stated priorities and target populations. The Attestation and other eligibility criteria would obviously leave some groups out of consideration for funding from the program at the outset.

[187] In my view, the limitation on the *Charter* rights of TRTL was minimal; it was a one-time impact on potential—not certain—funding in 2018. Even if the application for funding of TRTL had been assessed without the Attestation, there were several other criteria to be met and other priorities for the 2018 program that do not appear to reflect TRTL’s mandate or activities.

[188] The Applicants submit that while the Attestation may have sought to protect the rights of others, it did not protect their rights. However, this is the nature of a balancing exercise. The *Doré* analysis recognizes that rights are not absolute and the rights of some may inevitably yield to some extent to the rights of others.

[189] The objectives of the DESDA and the 2018 CSJ program were broad and designed to promote respect for the *Charter* and human rights of all. The limitation on the Applicants’ *Charter* rights was minimal and limited to lack of access to potential funding for one program year. The Applicants’ *Charter* rights were not affected in any other way; they remain free to

practice their religion and exercise their freedom of speech to promote their views, based on religion or otherwise, without interference.

[190] Against the important objective of creating an inclusive labour workforce by ensuring women, LGBTQ2 and minorities' rights are protected, and that more broadly, organizations receiving funding respect *Charter* rights and human rights, including reproductive rights, the minimal interference with the Applicants' sections 2(a) and 2(b) rights, in the limited context of an application for funding, reflects a proportionate balancing of the protections with the statutory objectives. The Minister's decision is reasonable.

X. Conclusion

[191] As found, the Attestation was a reasonable policy decision and within the Minister's authority in accordance with the DESDA. The decision to add the Attestation was not made with a closed mind, for improper purposes, or based on irrelevant considerations.

[192] The effect of the Attestation restricted or limited the Applicants' rights to freedom of religion and protection against compelled speech, but only minimally and only in the context of the application for 2018 CSJ funding. The limitation on the Applicants' *Charter* rights reflects a proportionate balancing with the objectives of the DESDA and the CSJ program.

[193] With respect to costs, I note that the parties intend to make joint submissions within 30 days of the issuance of this decision.

JUDGMENT in file T-8-18

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. The parties shall make joint submissions with respect to costs within 30 days of the issuance of the judgment. If the parties are unable to do so, the parties shall request a case management conference to establish timelines for their submissions on costs.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-8-18

STYLE OF CAUSE: RIGHT TO LIFE ASSOCIATION OF TORONTO AND
AREA, BLAISE ALLEYNE, AND MATTHEW
BATTISTA v CANADA (MINISTER OF
EMPLOYMENT, WORKFORCE, AND LABOUR)

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JUNE 22, 2021

JUDGMENT AND REASONS: KANE J.

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