



1990, c. E.2, (the “Act”), the respondent cannot require Jonathan to attend such programs;

- b) In the alternative, a declaration that the respondent’s policy of mandatory attendance at liturgies and religious retreats is a violation of section 2(a) of the Canadian Charter of Rights and Freedoms;
- c) An order directing the respondent to provide alternative arrangements for Jonathan during the time period of any liturgy or religious retreat.

***The disposition of this application***

[2] For the reasons that follow, judgment is to issue in accordance with paragraph 1(a) of the notice of application. Judgment on the claim for relief set out in paragraph 1(c) is reserved for one month from the release of these reasons to give the parties a further opportunity to resolve the issue of arrangements for Jonathan during the time of any liturgies and retreats, failing which we will provide directions. Counsel may make written submissions with respect to costs by exchanging copies and delivering them, in triplicate, to the office of this Court at Brampton within two months from the release of these reasons failing which no award will be made.

***The background to this application***

[3] At the time that this application was commenced, Jonathan was fifteen years of age and in grade 10 at Notre Dame Catholic Secondary School (“Notre Dame”), a school within the respondent’s district. His brother, the applicant, Amilcar, was also a student at Notre Dame but, by the time this application was heard, he was no longer a student at Notre Dame and the application, as it related to him, was abandoned.

[4] Mr. Erazo, in his affidavit in support of this application, described the background of the application, in part, as follows:

- 9. I enrolled both sons at Notre Dame because it is the best school in the district and because I was unable to send them to public schools outside of the district. Notre Dame is also closer to my family’s home.
- 10. As a Roman Catholic secondary school, Notre Dame provides courses and programs in religious education specific to Roman Catholicism. Notre Dame provides religion classes that are specific to the Roman Catholic faith. These classes form a part of the curriculum in the same manner as math or geography. Notre Dame also provides liturgies and religious retreats for students. Liturgies are akin to attendance at church and take place in the school auditorium. Religious retreats are religious-based field trips that, at times, have involved a trip to a Roman Catholic Church at which a priest has led students in prayer.

11. Both Jonathan and Amilcar regularly attended the religious programs and courses in grade 9. However, after their grade 9 years, we decided that they would take different classes in place of religion.
12. When I asked the respondent to exempt Jonathan from further religious studies in grade 10, the respondent refused my request.
13. For a period of over six months, the respondent refused to grant Jonathan any exemption without providing written reasons for this decision. The respondent finally granted the exemption to the religion classes only after it received a letter from my lawyer.
14. Thereafter, I asked the respondent to exempt Jonathan from programs in religious education, including liturgies and religious retreats. Amilcar, being eighteen, requested the same exemption for himself.
15. The respondent maintains that both Jonathan and Amilcar are required to attend programs in religious education, including liturgies and religious retreats.
16. I have been advised by Jonathan and Amilcar and believe that Notre Dame schedules Roman Catholic mass and liturgies for five or six times throughout each school year. These liturgies last approximately 60 to 90 minutes each. Students are encouraged to actively participate in communion and prayer and required to respectfully observe the service by standing and sitting at various times as dictated throughout the public worship.
17. Notre Dame does not hold a single liturgy for the entire school. Instead, in order to accommodate the size of the student population, Notre Dame holds the same liturgy at different times over a period of two days.
18. Religious retreats are scheduled multiple times every year, however students are required to attend only one such retreat. The retreats have, at times, included a full day field trip to a Roman Catholic Church at which a priest has led the students in prayer.

*The relevant provisions of the Act*

[5] The following provisions of the Act address movements from schools and exemptions from programs and courses of study in religious education. This application is brought pursuant to section 42(13).

[6] Sections 42(1), (11), (12) and (13) of the Act read as follows:

**Movement between types of boards: secondary school**

**Secondary school instruction: movement from English-language public board to English-language Roman Catholic board**

42. (1) A person who is qualified to be a resident pupil of an English-language public board and to receive instruction in a secondary school grade is entitled to receive instruction provided in a secondary school operated by an English-language Roman Catholic board if the area of jurisdiction of the public board is in whole or in part the same as the area of jurisdiction of the Roman Catholic board. 1997, c. 31, s. 20.

**Exemption from religious studies**

(11) On written application, a Roman Catholic board shall exempt a person who is qualified to be a resident pupil in respect of a secondary school operated by a public board from programs and courses of study in religious education if,

(a) the person is enrolled in a program that is not otherwise available to the person in a secondary school operated by a public board within the area of jurisdiction of the Roman Catholic board; or

(b) it is impractical by reason of distance or terrain or by reason of physical handicap, mental handicap or multi-handicap for the person to attend a secondary school operated by a public board. 1997, c. 31, s. 20.

**Same**

(12) A person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic board for a reason other than the one mentioned in clause (11) (a) or (b) is considered to have enrolled in all of the school's programs and courses of study in religious education. 1997, c. 31, s. 20.

**Additional exemptions**

(13) In addition to the exemptions provided for in subsection (11), no person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic board shall be required to take part in any program or course of study in religious education on written application to the Board of,

(a) the parent or guardian of the person;

(b) in the case of a person who is 16 or 17 years old who has withdrawn from parental control, the person himself or herself;

(c) in the case of a person who is 18 years old or older, the person himself or herself. 2006, c. 28, s. 9.

*The applicants' arguments in support of the exemption sought*

[7] The applicants' principal arguments in support of their claim for the exemption are set out, in part, in the applicants' factum as follows:

*B. The Education Act*

38. Subsection 42(1) of the *Education Act* provides that all persons in Ontario have a right to attend a publicly funded secondary school, without regard to one's religious beliefs.

39. Section 52 provides Catholic school boards with the authority "to establish and maintain programs and courses in religious education." Subsection 42(13) uses the same language and provides that no student shall be required to take part in any "program or course of study in religious education" upon written application by the student's parent, or by an eighteen year old student directly.

40. The first issue is whether liturgies and religious retreats are programs in religious education. If the answer is yes, the second issue is whether mandatory attendance and respectful observance amount to participation.

41. Liturgies and religious retreats at Notre Dame are stand-alone programs in an educational setting and have religious observance and education as their fundamental purpose. Liturgies involve public and communal worship, and religious retreats involve a field trip to a church at which a priest leads students in prayer. These activities are programs in religion education.

42. If this is correct, the 42(13) exemption precludes the respondent from requiring any student "to take part in" liturgies and religious retreats. The question of participation is a contextual one and depends upon the nature of the activity.

43. It is respectfully submitted that the respondent's policy of mandatory attendance and observance at religious retreats and liturgies effectively requires a student to take part in these programs. A religious retreat is a field trip, and to require attendance is to require a student to take part. Liturgies, on the other hand, are akin to attending church and can involve different levels of participation. One clearly participates by actively taking part in the sacrament and prayer, but one also participates by passively taking part as a member of the public and communal worship. This is particularly the case where one must observe the ceremony by standing and sitting together with other members of the communal worship.

44. It is also important to note that the respondent has repeatedly justified its policy of mandatory attendance on the ground that all members of the school

community are required to take part in all community activities. The emphasis has been upon participation as a member of the community.

45. Finally, alternative and reasonable arrangements in lieu of mandatory attendance are readily available in the circumstances. As noted, liturgies at Notre Dame occur on a rolling basis and supervision can be arranged without affecting a staff member's ability to attend any particular liturgy. There is therefore no reason why Jonathan cannot attend the library, main office, or an already supervised classroom during their scheduled liturgies.

*The reasons given by the respondent for denying the exemption claimed*

[8] The principal reasons for the respondent's refusal to recognize the applicants' claim for an exemption for Jonathan to take part in programs was given in a letter from John Lezon, the principal of Notre Dame, to Mr. Erazo dated June 25, 2012, a copy of which is exhibit "C" to Mr. Erazo's's affidavit. In it, Mr. Lezon stated, in part, the following:

During our meeting on May 2, 2012, we explained that the policy of the Dufferin Peel Catholic District School Board is that all students enrolled in our high schools will take a religion course and participate in a retreat each year from grade 9 through grade 12. This policy is outlined in the letter that is included with the registration package titled "Religious Information/New Registrants (Secondary Religious Expectations." A copy of the letter is included with this letter.

[9] Mr. Lezon's letter also contained the following statements:

The Board recognizes that any form of social or cultural discrimination is incompatible with Catholic moral principles and is in violation of the Ontario Human Rights Code. The Board recognizes that the school system gives pre-eminence to the tenets of the Catholic faith, congruent with the protection afforded in the *Ontario Human Rights Code*, the *Constitution Act, 1982*, and confirmed in the *Canadian Charter of Rights and Freedoms*.

The Board and its staff are committed to the elimination of discrimination as outlined in Ontario's Equity and Inclusive Education Strategy and the Ontario Ministry of Education Policy/Program Memorandum No. 119, in a manner which is consistent with the exercise of the Board's denominational rights under section 93 of the *Constitution Act, 1982* and as recognized at section 10 of the *Ontario Human Rights Code*.

The historical mandate of the Catholic school system in Ontario is to model the entire syllabus of the school on the life and teaching of Jesus. As such, the Dufferin-Peel Catholic District School Board has expectations of *all* students admitted. (emphasis added)

Our religious expectations are as follows:

1. *All* students will enroll in a Religion course in each of the four years. All Religion courses are approved by the appropriate Catholic authority. The Government of Ontario recognizes that Religion credits count towards a secondary graduation diploma.
2. *All* students will participate in an annual retreat for the first four years that they are in a secondary school. The retreat normally takes place during the school day at a site off school property. The school chaplain organizes the annual retreat based on spiritual themes appropriate for adolescents.
3. *All* students will participate in the prayer and the liturgical life of the school. Catholic students are expected to participate fully as mandated by their sacramental Baptism. *Non-Catholic students are expected to participate to the extent that they can.* It is not the intention of the Dufferin-Peel Catholic School Board to proselytize, however, for supervision, safety and community reasons, the entire school participates in all religious events that occur during the school year. At a minimum, non-Catholic students will attend and maintain respectful silence at all religious observances. *All* students are encouraged to get involved.
4. Students requesting accommodation must present written notice from their parents/guardians specifying their accommodation needs relating to religious observances, including the holy days on which they will be absent from school. This notice should be made in advance (preferably at the beginning of each school year) to ensure that scheduling of major evaluations, such as tests, assignments or examinations, takes the religious observances into consideration.
5. The Catholic District School Boards of Ontario follow approved provincial curriculum (sic). Given the distinctiveness of Catholic schools, the Government of Ontario recognizes parallel curricula for our system based on Catholic course profiles. All courses in all subject areas, in a Catholic secondary school, are taught from a Catholic perspective.

We hope that your experiences in our Catholic secondary schools will be rewarding.

(All emphasis added)

[10] The respondent's recognition of the applicants' entitlement to an exemption for Jonathan "from taking courses in religious education" was contained in the respondent's letter to Mr. and Mrs. Erazo dated October 31, 2012, signed by Ralph Borelli, Associate Director, Instructional Services. It reads, in part, as follows:

At Dufferin-Peel Catholic District School Board, religious and moral education is not, and must not, be one subject among many in the student's timetable; it infuses all classes and materials during the school day.

Based on the provision found in the *Education Act* 42(13), the Dufferin-Peel Catholic District School Board will comply with your request to have Jonathan exempt from taking courses in religious education, but there will not be any alteration in the religious and moral education that infuses the remainder of his timetable and Notre Dame Catholic School observances.

This exemption is valid for one year and the exemption must be applied for yearly. It is important to note, however, we expect Jonathan *to attend* and be respectful of all other religious observances. (Emphasis added.)

[11] In a letter dated November 12, 2012, to Mr. Borelli, Nathaniel Erskine-Smith, Mr Erazo's lawyer, sought clarification with respect to the application of the religious exemption in section 42(13) as follows:

Thank you for your letter dated October 31, 2012. Mr. Erazo appreciates that you have acknowledged the religious exemption under section 42(13) of the *Education Act*, and that his son Jonathan will be exempt from taking courses in religious education for the remainder of the year.

Despite exemptions, however, it appears from your letter that all students remain required to attend "religious events" or "religious observances" that occur throughout the year. I am writing to clarify the meaning of those terms and thus to clarify the exemption that you have granted.

Mr. Erazo has no objections to much of what you describe as the "religious and moral education infuses the remainder" of the curriculum. For instance, he accepts that there will be bible readings or other prayers at the start of the school day and that there may well be references to religious content during classes, such as reading the Lord's Prayer in Spanish as a matter of Spanish education.

Mr. Erazo instead objects to two specific activities that he believes properly fall within the meaning of "religious education" as referenced in the *Education Act*. First, there is the matter of religious retreats, and second, there is the matter of mandatory attendance at mass.

It is my understanding that religious retreats involve a day spent at a Catholic church with a priest. As a field trip with a religious purpose, this activity clearly falls within "religious education", however, rather than requiring the school to provide alternative arrangements for his son, Mr. Erazo is happy to keep his son at home for the days such field trips are planned.



With respect to mandatory attendance at mass, given such religious observances are specific to the Catholic faith within a Catholic school, it is my opinion that such events also fall squarely within the meaning of “religious education” as it is used in the *Education Act*. Of course, as noted in your letter, “for supervisions, safety and community reasons”, the entire school must attend mass, including non-Catholics that have been exempted from religious education. On this view, attendance is not required to meet any “religious education,” but instead a matter of the logistics of properly supervising every student in the school at one time.

I would kindly suggest that there are other means through which adequate supervision could be observed...

In sum, I believe that the two issues of concern to my client can be easily remedied, and need not be of concern going forward, especially given the significant resolution achieved to date. I urge you to broaden the scope of the exemption granted as per the terms of this letter and allow Mr. Erazo’s son to withdraw from both religious retreats and attendance at mass.

If you have any questions...

[12] The respondent replied to Mr. Erskine-Smith’s letter with a letter to him dated December 7, 2012, from its lawyers, Miller Thomson, signed by Hugh M. Kelly. It reads, in part, as follows:

As to the issue of retreats, we are instructed that, as your letter indicates, your client and ours have agreed that the student would remain at home during the time of the retreats. As a result, we assume that this is no longer an issue.

Many of the regular activities carried on in Catholic schools (including traditional Catholic school observances) did not fall within the concept of “programs and courses”, and were not when subsection 42(13) was introduced - and are not today – affected by the exception.

The Board and the school expect all students to remain present for all parts of the school activities included at various times throughout the year, whether or not they have a Catholic aspect.

By very (sic) definition in the *Education Act*, a “school is a community, and the Board’s expectation that all students and staff must share in community activities is not, within such content, an unreasonable demand. We respectfully suggest that in your focus in the 6<sup>th</sup> and 7<sup>th</sup> paragraphs of your letter upon “supervision”, the equal importance of “community” has been totally ignored.

But even within the context of supervisions, the “solution” that you have suggested impacts on others, as it would require another member of the

community to be designated to withdraw from these community activities to provide such supervision. Contrary to what you have suggested, this is not an easy remedy, and indeed continues to cause concern going forward.

Our client made its expectations clear at the time of registration that all members of the school community are expected to participate in the life of the community. The exemption required by statute will be honoured, but all students including your client's child will be required to join the other members of the community in school activities.

[13] The respondent's arguments in support of its position are set out, in part, in the respondent's factum as follows:

18. "Programs" that are offered by district school boards are academic endeavours such as a collection of courses for a specific purpose or end result. Examples include gifted programs and other special education programs: French immersion programs; supervised alternative learning programs.

19. "Programs in religious education" do not include activities such as:

- a) retreats;
- b) prayers said at the beginning of class;
- c) Mass or other liturgies celebrated in or on school property;
- d) Monthly nomination of students for demonstrating the monthly virtue for which special certificates and t-shirts are awarded;
- e) School and grade assemblies held at the beginning of each semester, at which attendance is mandatory, and during which the discussion revolves around the distinct nature of the Catholic school and the model of Jesus who shows how to live in right relationship with one another and in the greater community, from which flows the outlining of the code of conduct and expectations for student behavior.

32. By very (*sic*) definition in the *Education Act* a "school" is a community. A Catholic school is a distinct community. There is a tremendous amount of commentary, research and jurisprudence on what that distinct community is; what it incorporates into its daily routine and existence; what its legal rights are to maintain its unique Catholic identity and existence.

33. As is well known in Ontario, the right to operate Catholic schools and all that entails is protected by the *Constitution Act, 1867*; the *Canadian Charter of Rights and Freedoms*; the *Education Act* itself; and the *Ontario Human Rights Code*. As

acknowledged by the Supreme Court of Canada, the Catholic School is different from the public school.

34. Related activities to the courses of study provided (some of which are already noted above) include liturgies; services; prayers before class; retreats; scriptural readings at the start of each day; class discussions and celebrations of the Catholic Virtues; discussions about the distinct Catholic nature with respect to discipline and student behavior at all grade assemblies at the onset of each semester; team prayers prior to the start of sports events; social justice and community outreach conducted in the context of Gospel teaching; student clubs and activities are carried on and based upon explicit Gospel teaching. These activities are not programs from which a student would be granted exemption or special treatment.

35. Prayers, retreats, Mass and other liturgical events are not programs but rather are the fabric of what and how Catholicity is celebrated. This is analogous to the ethos of French schools (both Catholic and public) in the use of French assemblies, cultural trips to Quebec, local “Bonhomme Carnaval” (winter carnivals), the playing of French radio stations during lunch time, the prohibition on the use of English on school buses, fund raising for French endeavours, French daily announcements, French folk events, celebration of St. Jean Baptiste Day, all of which are all part of the fabric of French schools, and certainly not programs.

36. Retreats are very much more varied than (to use Mr. Erazo’s description) “a full day field trip to a Roman Catholic Church at which a priest had led the students in prayer”. In addition to liturgies including Mass, there are many types of retreats made available to our students. The purpose of retreats include:

- providing a time of pause away from ordinary routine;
- providing time to allow introspection and reflection;
- building community;
- being part of a process of spiritual journey and formation.

37. Retreats can be full day, based on a theme pertinent to religious development of adolescents such as:

- Grade 9 Welcome and Community Building;
- Grade 10 Building Healthy Relationships;
- Grade 11 The Golden Rule; World Religion awareness;
- Grade 12 Crossroads: inviting students to look over where they have been for the last 4 years and where they want to be in the future.

38. Retreats can be located off-site, at a retreat centre. There can be guest speakers. Liturgies and services can be held. Retreats can be service based – such as an inner city walk; working in a soup kitchen or food bank.

*The principal issue*

[14] Despite the wide range of the respondent's responses set out above, the following more focused admissions, also included in the the respondent's factum, help narrow the main issue that must be decided:

3. Jonathan was a grade 9 student at Notre Dame for the academic year September 2011-June 2012 and a grade 10 student for the academic year September 2012-June 2013.

4. Jonathan was not registered at Notre Dame as a Roman Catholic. Oliver did not want to enroll his son in his local district public high school within the respondent's district because Notre Dame was the best school in his district and it was closer to his home than to his local district public school.

5. There is no issue that Oliver was allowed under the Act to enroll Jonathan at Notre Dame, a Catholic school, even though Jonathan was not Catholic.

6. There is no issue that upon written application and satisfaction of stated criteria set out in the Act, an exemption could be granted to Jonathan from taking "programs and courses of study in religious education" at Notre Dame.

7. There is no issue that Jonathan was granted an exemption from taking the otherwise mandatory grade 10 religious education course during the September 2012-June 2013 academic year.

8. The only issues relate to how the applicants want the word "program" to be interpreted for them and for their purposes.

[15] In my view, paragraph 8 effectively states what the principal issue is. However, with respect, I would state it somewhat differently as follows:

On the correct interpretation of the language of section 42(13) of the *Education Act*, and its application to the specified facts described in paragraph 20, below, were the applicants entitled to require the respondent to recognize that Jonathan was entitled to the exemption from liturgies and retreats that was claimed on his behalf?

*The standard of review*

[16] Notwithstanding the contrary position taken by the respondent, it is my view that judicial review is an appropriate process for the determination of the main issue raised in this application. That issue requires us to provide an interpretation of the mandatory provision contained in section 42 (13) and raises a question of law for which the standard of review is correctness.

*Analysis*

[17] This appeal reflects one of the inevitable sources of the tension that can arise in a secondary school environment where, as here, legislation provides that students who, for any reason, do not wish to take instruction in the Catholic religion are nevertheless entitled to attend a Catholic school. The Legislature has responded to this kind of situation by providing for various exemptions for students who fall within this group. Jonathan is one of them.

[18] Sections 42(11) and 42(13) are directly applicable to Jonathan's situation. He has already received an exemption from taking "courses of study in religious education" pursuant to section 42 (11) but has so far been unsuccessful in obtaining recognition for a further exemption from taking part in any "program or course of study in religious education" pursuant to section 42 (13).

[19] The exemption sought in this case is from taking part in "liturgies" and "retreats" and the parties have focused on whether or not those activities qualify as "programs" within the language of section 42(13).

[20] The evidence of what goes on during liturgies and retreats, the frequency with which they are held and some other details is, as the summary set out above describes, in some conflict. However, what is not in dispute is that both activities include a substantial component of ritual and prayer lead by Catholic priests.

[21] As set out in paragraphs 8 (at page 6) and 12 (at pages 10 and 11), above, it is the "expectation" of the respondent that:

"All students will enroll in a Religion course...",

"All students will participate in an annual retreat...",

"All students will participate in the liturgical life of the school (Catholic students are expected "to participate fully as mandated by their sacramental Baptism",

"Non-Catholic students are expected to participate to the extent that they can. At a minimum, non-Catholic students will attend and maintain respectful silence at all religious observances".

[22] It would appear, however, that because it is admitted by the respondent that "Jonathan was not registered at Notre Dame as a Roman Catholic", he might be regarded as a "Non-

Catholic student” and expected to participate “in the prayer and the liturgical life of the school” to a lesser extent than expected of Catholic students.

[23] There does not appear, however, to be any evidence that the expectations made of Jonathan would be lessened by reason of the exemption from religious courses that Jonathan already has.

[24] The Oxford Online Dictionary gives, as one definition for “program”, the following:

A planned series of future events, items, or performances.

[25] Many other dictionaries give similar definitions for the same word.

[26] In my view, the planned liturgies and retreats that are the subject of this appeal may correctly be viewed, either separately or together, as falling within this definition. They are series of events, somewhat different from each other in some ways, but having as their central purpose the provision of religious experiences and education to the students who attend them. The various hypothetical examples of “programs” referred to by the respondent do not advance the respondent’s arguments that planned series of liturgies and retreats are excluded from the definition. The definition proposed by the respondent is unduly narrow and does not take into account the context in which the liturgies and retreats take place.

[27] This interpretation is consistent with the evident purpose of section 42(13) which is to give relief to students who may respect many Catholic principles and observances but do not wish to participate in Catholic, or perhaps any, form of worship, even at a minimal level of participation. For some of them, that might well require a betrayal of their own principles. No Catholic school system that is required by law to admit non-Catholic students should have the right to require such participation from their students and, because of section 42(13), the respondent does not.

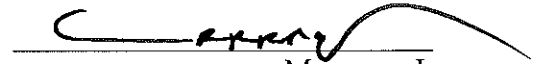
[28] It follows that the applicants were entitled, according to law, to the exemption claimed for Jonathan upon making the requisite application even without the acquiescence of the respondent.

[29] I conclude with the observation that my determination that liturgies and retreats constitute “programs” does not necessarily exclude the alternative that they are also part of, or ancillary to, the “courses in religious education” from which Jonathan has already received an exemption and that no further exemption was required to achieve the applicants’ objective.

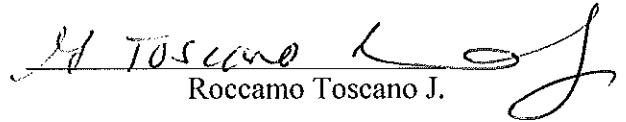
However, as this alternative was not raised at any time throughout this appeal, I leave this question to be determined, if ever, at another time.



Matlow J.



Maranger J.



Rocco J. Toscano

Released: April 4, 2014

**CITATION:** Erazo v. Dufferin-Peel Catholic District School Board, 2014 ONSC 2072  
**COURT FILE NO.:** DC 13-44-00  
**DATE:** 20140404

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**MATLOW, MARANGER & ROCCAMO  
TOSCANO, JJ.**

**B E T W E E N:**

OLIVER ERAZO, AMILCAR ERAZO REYES  
and JONATHAN ERAZO REYES, a minor, by his  
litigation guardian, Oliver Erazo

Applicants

- and -

DUFFERIN-PEEL CATHOLIC DISTRICT  
SCHOOL BOARD

Respondent

---

**REASONS FOR JUDGMENT**

---

**MATLOW, J.**

**Released:** April 4, 2014