IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***British Columbia Teachers' Federation v. British Columbia (Attorney General),*** 2009 BCSC 440

Date: 20090331
Docket: S085226
Registry: Vancouver

Between:

British Columbia Teachers' Federation,
Federation of Post-Secondary Educators of British Columbia,
British Columbia Division of the Canadian Union of Public Employees,
British Columbia Nurses' Union
and Marcia Toms

Plaintiffs

And

Attorney General of British Columbia,
Gloria Laurence and Wendy Weis

Defendants

And

British Columbia Civil Liberties Association

Intervenor

Before: The Honourable Mr. Justice Cole

Reasons for Judgment

Counsel for the British Columbia Teachers' Federation, British Columbia Nurses' Union and Marcia Toms	J. J. M. Arvay, Q.C. E. R. S. Sigurdson
Counsel for the Federation of Post-Secondary Educators of British Columbia and British Columbia Division of the Canadian Union of Public Employees	L. B. McGrady, Q.C. M. J. Prokosh
Counsel for the Attorney General	C. E. Jones K. A. Wolfe R. Mullett

Counsel for Gloria Laurence and Wendy Weis	P. A. Gall, Q.C. R. W. Grant D. B. Borins
Counsel for the British Columbia Civil Liberties Association	R. D. Holmes
Written Submissions	March 28 and 30, 2009 Vancouver, B.C.

[1] The Attorney General and the individual defendants have requested that I suspend the implementation of my order until after the election.

[2] The Attorney General contends that it would be unfair to strike down the limits on third party spending in the ***Election Act***, R.S.B.C. 1996, c. 106 [***BC Act***] as they relate to the pre-campaign period, without also striking down the party and candidate spending limits in the ***BC Act***. In support of this position, the Attorney General cites my findings on the injunction application: "[t]o suspend the operation of only the third party election advertising restrictions would upset [the] balance to the detriment of the other participants in the electoral process".

[3] I agree with the Attorney General. However, the present case is unlike that relied upon by Attorney General, ***Figueroa v. Attorney General of Canada*** (2000), 50 O.R. (3d) 161, 189 D.L.R. (4th) 577 (C.A.), in which the Ontario Court of Appeal suspended the implementation of its order striking down unconstitutional provisions due to the uncertain ramifications of interfering with the complex legislation at issue. Although in the present case, striking down the third party spending limits without

also striking down the party and candidate spending limits would be unfair, unlike in ***Figueroa***, the complexity of the legislative scheme is not such that potential ramifications on the ***BC Act*** would make a suspension of my order necessary. As I indicated in the last few paragraphs of my judgment, the solution here is straightforward; there is no complex remedy required.

[4] The Attorney General also says that because there is already an election underway, justice requires the suspension of my declaration. The Attorney General refers to ***Dixon v. Canada*** (1989), 35 B.C.L.R. (2d) 273, 59 D.L.R. (4th) 247 (S.C.), where the electoral boundary system was found to violate s. 3 of the ***Charter***. The court refused to grant a declaration that would extinguish certain electoral districts, as this would mean there would be no electoral boundaries if a quick election was called. That is not the situation here. Unlike in ***Dixon***, there *is* "electoral machinery" (at 311) in place. Implementation of my order would not upset or hinder the upcoming election.

[5] The Attorney General says there would be uncertainty if I do not accede to his request for a suspension. For example, the Attorney General says that under my order the $150,000 spending limit for third parties could be spent entirely in the 28-day campaign period. The Attorney General claims that the Legislature intended that amount of money to be spent during the whole of the 3-month pre-campaign and campaign periods, not only during the 1-month campaign period. There is, however, no requirement in the existing legislation that third parties spend any amount of money, at any particular time. In fact, as noted by Mr. Zubyk, the most

effective period of time for election advertising is within 2 weeks prior to election day. One would therefore assume that an effective campaign would spend the majority of its resources during the campaign period, regardless.

[6] The Attorney General also queries whether or not money spent in the 60-day pre-campaign period would count towards the $150,000 limit – the answer is that clearly it would not.

[7] The Legislature is now in session and they have the ability and the right to make the necessary changes to the ***BC Act*** to ensure the principles of freedom of expression are upheld. Moreover, the Attorney General has been aware of the effects of my judgment since March 27, 2009. He will have, in my view, ample opportunity to consider and craft the appropriate legislation.

The Honourable Mr. Justice F. W. Cole