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No 25926

IN THE

Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL OF THE PROVINCE OF QUEBEC

BETWEEN: GAÉTAN DELISLE
(Petitioner before the Superior Court)
APPELLANT

AND: THE ATTORNEY GENERAL OF CANADA
(Respondent before the Superior Court)
RESPONDENT

AND: PUBLIC SERVICE ALLIANCE OF CANADA
INTERVENANT

AND: CANADIAN LABOUR CONGRESS
INTERVENANT

AND: ONTARIO TEACHERS' FEDERATION
INTERVENANT

AND: THE CANADIAN POLICE ASSOCIATION
INTERVENANT

AND: PROCUREUR GÉNÉRAL DU QUÉBEC
INTERVENANT

INTERVENANT THE CANADIAN POLICE ASSOCIATION'S AMENDED FACTUM

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IN THE

Supreme Court of Canada

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INTERVENANT

INTERVENANT'S AMENDED FACTUM

THE FACTS

The merits of the case

1. Appellant's statement of facts is agreed upon with the following additions;

The Facts

2. It is well-established that virtually all police forces in Canada except the RCMP are unionized; the Respondent has not shown any deleterious effect to police unionization generally; many unionized police associations neither have nor seek the right to strike;

3. Much of the work of the RCMP is normal police work; its national character does not change its fundamental role as a police force;

4. The RCMP, like other police forces is a disciplined body, with obligations imposed upon its members to obey orders; Respondent has conceded the law abiding character of members of the RCMP;

5. Art. 39, Art. 40 and Art. 41 of the Code of Conduct, imposed by regulation under the RCMP Act state:

> 39.(1) A member shall not act or conduct himself or herself in any disgraceful or disorderly act or conduct that could bring discredit on the Force.
>
> (2) Without restricting the generality of the foregoing, an act or conduct of a member is a disgraceful act or conduct where the act or conduct
>
> a) is prejudicial to the impartial performance of the member's duties; or
>
> b) results in a finding that the member is guilty of an indictable offence or an offence punishable on summary conviction under an act of Parliament or of the legislature of a province (SOR/94-219, s. 15).

40. A member shall obey every lawful order, oral or written, of any member who is superior in rank or who has authority over that member. (SOR/94-219, s. 16).

41. A member shall not publicly criticize, ridicule, petition or complain about the administration, operation, objectives or policies of the Force, unless authorized by law.

6. These provisions are not impugned in the present litigation but they must be considered as the context in which Mr. Delisle wishes assert his right to freedom of association and expression and his claim that he belongs to a minority deserving of Sec. 15 protection;

7. It is established that the present association does not have the independence and the protection from pressure that unions have won in this country over the last century;

The Intervention and the C.P.A. Perspective

8. Applicant is an established organization, promoting the interests of police, the interests of justice from its view-point, the good relations between the police and the rest of society, and public safety; it is involved in all areas of police concerns, including discipline and working conditions;

9. The disciplined nature of police forces makes it particularly important for the association to have the independence and freedom from managerial interference which are the basic qualities which distinguish unions from other associations;

10. The benefits of a unionized association could include, among other things:

i. a mechanism for the independent review of management decisions and of grievances;

ii. protection of the members' freedom of conscience and expression within the confines of their duties;

iii. a mechanism for ensuring safe and salubrious working conditions, proper equipment and proper work conditions;

iv. mechanism for the negotiation and maintenance of fair benefits, security of employment and retirement benefits;

v. the ensuring of genuine employee input on all of these questions;

vi. a mechanism for the definition of employee duties;

vii. an independent mechanism for discipline, promotion and transfer;

11. The judgment of this Court can potentially affect all police forces and not only the RCMP;

12. There is no impermeable barrier between the RCMP and other forces; the RCMP can for instance, be assigned to assume responsibilities hitherto carried out by unionized forces, as happened recently in Moncton; where, by federal-provincial agreement, the RCMP took over the municipal police force functions;

13. The need to protect members of the force and any association of its members from unfair interference by management, especially in a highly disciplined and structured organization will be underlined; this, and not the hypothetical right to strike is the main distinction between a union and an informal association; it will therefore be

argued that any sec. 1 argument does not apply to the formation of the union, but, at most, to its powers and to the procedures open to it as a bargaining tool;

14. Moreover, all police forces often have to operate jointly, for instance in the field of narcotics or child kidnapping in order to promote the interest of law and order;

POINTS IN DISPUTE

1. Do the impugned provisions violate the constitutional protection of freedom of association (sec. 2d) of the Charter?

2. Do the impugned provisions violate the constitutional protection of freedom of expression (sec. 2b) of the Charter?

3. Do the impugned provisions violate the right to equality under Sec. 15 of the Charter?

4. If any of the above Charter infringements occur, are the provisions justified under Sec. 1 of the Charter?

THE ARGUMENT

Freedom of Association

1. On the issue of freedom of association, the Honourable Mr. Justice Baudoin dissented from his colleagues; the Court has the benefit of reading the majority reasons of the Honourable Mr. Justice Fish and the dissent;

2. The fundamental difference between the two views is the interpretation of the "trilogy" of cases emanating from this Court, namely PSAC vs. Canada, [1987] 1 S.C.R. 424, Re Public Service Employee Relations Act, [1987] 1 S.C.R. 313 and RWDSU vs.

Saskatchewan, [1987] 1 S.C.R. 460, as well as the slightly later PIPSC vs. NWT, [1990] 2 S.C.R. 367;

3. Mr. Justice Fish concluded from these cases that the freedom to join with others in order to form a union is not protected under the Charter; it is submitted that he erred;

4. What the Court did not protect was the right to strike or to any particular form of collective bargaining;

5. It stands to reason that the particular form of collective bargaining in Canada, very different from the forms prevailing in other democratic countries such as France and Germany, is not protected constitutionally; such a form may evolve or be changed by legislation and should not be enshrined in stone;

6. This is what McIntyre J. said in Re Public Service Employee Relations Act, but he did not say that the right to associate was not protected;

7. He clearly limited his conclusions to the right to strike;

RWDSU v. Saskatchewan, supra at p. 485

8. The fundamental right to associate in an independent association was approved by McIntyre J. in the following passage in Re Public Service Employee Relations Act at p. 407:

> Of the remaining approaches, it must surely be accepted that the concept of freedom of association includes at least the right to join with others in lawful, common pursuits and to establish and maintain organizations and associations as set out in the first approach. This is essentially the freedom of association enjoyed prior to the adoption of the Charter. It is, I believe, equally clear that, in accordance with the second approach,

> freedom of association should guarantee the collective exercise of constitutional rights. Individual rights protected by the Constitution do not lose that protection when exercised in common with others. People must be free to engage collectively in those activities which are constitutionally protected for each individual. This second definition of freedom of association embraces the purposes and values of the freedoms which were identified earlier. For instance, the indispensable role played by freedom of association in the democratic process if fully protected by guaranteeing the collective exercise of freedom of expression. Group advocacy, which is at the heart of all political parties and special interest groups, would be protected under this definition. As well, group expression directed at educating or informing the public would be protected from government interference (see the judgment of this Court in Dolphin Delivery, supra). Indeed, virtually every group activity which is important to the functioning of democracy would be protected by guaranteeing that freedom of expression can be exercised in association with others. Furthermore, religious groups would receive protection if their activities constituted the collective exercise of freedom of religion. Thus, the principal purposes or values of freedom of association would be realized by interpreting s. 2(d) as protecting the collective exercise of the rights enumerated in the Charter.

9. The PIPSC decision confirmed this; the late Mr. Justice Sopinka said at p. 404:

> The above propositions concerning s. 2(d) of the Charter lead to the conclusion, in my opinion, that collective bargaining is not an activity that is, without more, protected by the guarantee of freedom of association. Restrictions on the activity of the collective bargaining do not normally affect the ability of individuals to form or join unions.

10. Clearly, laws which prevent the formation of unions would be incompatible with the Charter; otherwise the last sentence of the quotation of Mr. Justice Sopinka makes no sense at all;

11. Internationally freedom of association has always been connected to the formation of unions;

12. In Norman, Freedom of Peaceful Assembly and Freedom of Association, chapter 7 in Beaudoin and Mendes, Canadian Charter of Rights and Freedoms, we read at p. 310-311:

B. International Commitments

> In addition, some labour supporters might have assumed that Canada's international obligations would ensure that the Charter would be interpreted in such a way as to protect workers' rights to bargain collectively and to strike. Most recently, Canada was party to the Final Act of the Conference on Security and Cooperation in Europe (the Madrid Conference), signed on March 15, 1983. It states in part:
>
> > The participating States will ensure the right of workers freely to establish and join trade unions, the right of trade unions freely to exercise their activities and other rights as laid down in relevant international instruments. They note that these rights will be exercised in compliance with the law of the State and in conformity with the State's obligations under international law.
>
> In 1976, Canada ratified and acceded to the two great Covenants flowing from the Universal Declaration of Human Rights. Article 22 of the International Covenant on Civil and Political Rights provides:
>
> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his rights.
>
> 2. No restrictions may be placed on the exercise of this right other than

those which are prescribed by law and which are necessary in a democratic society in the interest of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this rights.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize (hereinafter referred to as I.L.O. Convention No. 87) to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 8 of the International Covenant on Economic, Social and Cultural Rights states:

1. The States Parties to the present Covenant undertake to ensure:

   a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his

economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations.

c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

d) The right to strike, provided that it is exercised in

> conformity with the laws of the particular country.

13. Even if international treaties do recognize the right to exempt police forces from labour law, the thrust of the authority is amply clear in favour of the right to form a union;

14. In Hills v. Canada, [1988] 1 S.C.R. 513, L'Hereux-Dubé J. said at p. 558:

> Appellant, while not relying on any specific provisions of the Charter, nevertheless urged that preference be given to Charter values in the interpretation of a statute, namely freedom of association. I agree that the values embodied in the Charter must be given preference over an interpretation which would run contrary to them (RWDSU vs. Dolphin Delivery Ltd., [1986] 2 S.C.R. 573; Manitoba (Attorney General) vs. Metropolitan Stores Ltd., [1987] 1 S.C.R. 110).

15. Given this and the well-known case of Gamble v. The Queen, [1988] 2 S.C.R. 595 which calls for broad and purposive interpretation of the Charter, it is submitted that it is wrong to interpret the Charter so as to exclude the right to form a union from freedom of association for a police force or any other group of employees;

16. Libman vs. Quebec, [1997] 218 N.R. 241 also favours this view as does the minority judgment in Black v. Law Society of Canada, [1989] 1 S.C.R. 595 (the majority chose not to discuss freedom of association because Sec. 6 was sufficient to dispose of the case);

17. The essence of a trade union is not the modalities of negotiation, strike or lock-out; but the independence, the freedom from penalty for union activity and the freedom from pressure from management or, in the case of the public sector, from government;

18. Given the disciplined nature of the RCMP, its discipline code, quoted above in paragraph 5 of the facts, and the vast powers of the Commissioner in the RCMP Act and the disciplinary procedures under it, it is particularly important, indeed fundamental, to protect the right to organize without fear;

19. These rights are so basic that they are clearly covered by the following passage in Libman, supra at p. 268-269:

> Freedom of association is also infringed for similar reasons. As was pointed out earlier, there are groups that cannot incur expenses independently of the national committees to promote or oppose, directly or indirectly, one of the options submitted to a referendum. The forms of expression available to these groups are restricted. In Professional Institute of the Public Service of Canada vs. Northwest Territories (Commissioner) et al, [1990] 2 S.C.R. 367; 112 N.R. 269 Sopinka J. stated, inter alia, that the protection provided for in s. 2(d) includes the exercise in association of the constitutional rights and freedoms of individuals. He relied on the reasons of Le Dain and McIntyre, JJ., in Reference Re Compulsory Arbitration, [1987] 1 S.C.R. 313; 74 N.R. 99; 78 A.R. 1; 38 D.L.R. (4th);
>
> Le Dain, J. made the following connection between freedom of association and freedom of expression, at p. 391 S.C.R.:
>
> > "Freedom of association is particularly important for the exercise of other fundamental freedoms, such as freedom of expression and freedom of conscience and religion."
>
> McIntyre J., stated the following, at p. 407 S.C.R.:
>
> > "It is, I believe, equally clear that...freedom of association should guarantee the collective exercise of constitutional rights. Individual rights protected by the Constitution do not lose that protection when exercised in common with others.
>
> In the case at bar, there are both individuals and groups whose freedom of expression is restricted by the impugned legislation. These groups therefore cannot freely exercise one of the rights

> protected by the Canadian Charter, namely freedom of expression; their freedom of association is accordingly infringed.

underlining ours

20. In Brun & Tremblay, Droit Constitutionnel 2e ed at p. 895-896, the authors concluded:

> Pour la Cour suprême, nous l'avons vu, la liberté d'expression protège aussi bien des activités économiques que des activités politiques: Ford c. Québec, [1988] 2 R.C.S. 712, 764. Il devrait donc en être de même pour la liberté d'association. D'autant plus que celle-ci, avons-nous constaté, n'a rien à voir avec les buts poursuivis par l'association: Re Public Service Employee Relations Act, [1987] 1 R.C.S. 313, 406 (j. McIntyre). La liberté d'association est le droit de l'individu de se joindre à d'autres personnes pour mieux exprimer ce qu'il peut légalement exprimer seul.
>
> C'est en fait ce que la jurisprudence admet en reconnaissant que la liberté d'association protège le droit de former un syndicat d'employés: voir supra. Et les mêmes principes conduisent nécessairement à la conclusion qu'il en est également ainsi pour les associations d'employeurs ou de professionnels: Black c. Law Society of Alberta, (1986) 27 D.L.R. (4th) 527 (C.A. Alta), [1989] 1 R.C.S. 591, 636 (juges McIntyre et L'Heureux-Dubé).

underlining ours

21. It is therefore submitted that Mr. Justice Fish erred and Mr. Justice Baudoin was correct and that freedom of association is breached by the present law;

FREEDOM OF EXPRESSION

22. It has been shown that, in particular the context of the RCMP, freedom of association and freedom of expression are closely related and the prohibition limits freedom of expression significantly;

23. The close connection between the two freedoms is evident; in Libman supra this Court noted it in explicit terms;

24. It has often been held that all expressive conduct triggers protection; justification must be made out under Sec. 1 and not by excluding some expressive conduct totally from Charter protection:

Osborne v. Canada, [1991] 2 S.C.R. 64;

R. v. Zundel, [1992] S.C.R. 73;

Libman supra;

25. The importance of freedom of expression cannot be overstated:

Libman supra;

Committee for Commonwealth vs. Canada, [1991] 1 S.C.R. 139;

R vs. Kopyto, [1987] 47 D.L.R. 4th 213 (Ont. C.A.);

26. The position of the Courts below, that expression is not involved in protecting the right to form a union is too technical and narrow to be correct (Libman supra, Gamble supra);

27. The Libman case explicitly calls for a very broad interpretation of freedom of expression; this is consistent with all of the earlier decisions;

28. In the context of a disciplined, highly-controlled force with severe restrictions on criticism, only an independent union can make it possible for members to express themselves on matters essential to them;

29. The jurisprudence on free expression has generally supported free expression and has rejected various types of attempts to narrow its scope:

Dagenais vs. Canada, [1994] 3 S.C.R. 833;

Ford vs. A.G. Quebec, [1988] 2 S.C.R. 712;

Peterborough vs. Ramsden, [1993] 2 S.C.R. 1089;

30. It follows that the present legislation is a violation of freedom of expression, as well as freedom of association;

EQUALITY

31. On the issue of equality, Intervenant supports Appellant's position and adds that the restriction of fundamental rights under the Discipline Code of the RCMP make its members a "discreet and insular minority" within the meaning of Miron v. Trudel, [1995] 2 S.C.R. 418; Andrews v. Law Society of B.C., [1989] 1 S.C.R. 145, Egan vs. Canada, [1995] 2 S.C.R. 513, R. v. Généreux, [1992] 1 S.C.R. 259 and Vriend v. The Queen, [1998] 1 S.C.R. 493;

32. It is true that most distinctions based on profession or employment do not qualify, but when fundamental rights are violated, Sec. 15 protects the holders of the rights;

33. Because the RCMP Act and disciplinary code quoted in paragraph 5 above, purport to deprive members of basic rights, they can trigger protection under Sec. 15; these potentially devastating liabilities mean that members of the RCMP are not in the same position as other citizens on significant matters;

Andrews, supra;

Vriend, supra;

SEC. 1

34. Justification of legislation under Sec. 1 contains three stages: a) laudable purpose b) proportionality and c) minimal impairment;

R. v. Oakes, [1986] 1 S.C.R.103

35. There appears to be a hierarchy of rights, with political expression and artistic expression ranking ahead of commercial expression:

Reference re Sec. 193 and 195 Cr.C., [1990] 1 S.C.R. 1123;

Rocket v. Royal College of Dental Surgeons of Ontario, [1989] 1 S.C.R. 927;

Butler v. The Queen, [1992] 1 S.C.R. 492;

36. The present case, despite its context of employment, deals with fundamental questions; in that way it resembles Osborne supra and therefore the rights merit a high degree of protection and justification of any violation should be difficult;

37. Freedom of speech and association are, in any event essential values, even in the less protected areas; for instance many "commercial" cases have succeeded despite the less pressing claims of commercial expression:

Ford v. AG Quebec, [1988] 2 S.C.R. 712;

Rocket supra;

Maroist v. Barreau du Québec, [1987] R.J.Q. 2322 (C.A.);

Re Klein and Law Society of Upper Canada, (1985) 16 D.L.R. 4th 489; (Ont. Div. Ct);

RJR McDonald v. AG Canada, [1995] 3 R.C.S. 199;

Bernstein v. Biron et al. [1993] R.J.Q. 1487 (Que. S.C.);
Ville de Montréal v. Cabaret Sex Appeal [1994] R.J.Q. 2133 (Que. C.A.);

38. In a case such as this, dealing with both with political opinions and with non-political, but crucial questions of personal expression with respect to a person's work and livelihood, there would have to be an exceptionally strong justification, similar to the one in R. v. Keegstra [1990] 3 S.C.R. 697 for Sec. 1 to save a violation; nothing like the Keegstra situation exists here;

39. The test under R. v. Oakes has to be read in the context of all of the Supreme Court decisions which call for a generous and broad interpretation of the Charter: Gamble v. Her Majesty the Queen, supra; Dagenais, supra;

40. It is established that under Sec. 1 the burden of proof and persuasion rests on the person justifying the law:

Oakes supra;

Edwards Books v. R, [1984] 2 S.C.R. 66;

41. In all of the cases in which Sec. 1 was applied to free expression, what strikes one is the narrow ambit of the justification; the courts made it clear just how extraordinary and special a case had to be to allow a Sec. 1 justification; the same must apply to freedom of association;

42. One can cite as an example R. vs. Butler supra where the obscenity provisions were saved precisely because the majority limited their application to three very narrow forms of expression and R. v. Keegstra, [1990] 3 S.C.R. 697, where the hate propaganda laws were upheld because of the extreme nature of hate and the fact that

only hate propaganda in that radical form was outlawed;

43. It is clear that any justification must be "carefully tailored" in the context of the infringed right; broad, over-inclusive provisions will not do:

Zundel No. 2 supra (p. 36)

LAUDABLE PURPOSE

44. The government undoubtedly has a laudable purpose in trying to create a disciplined national police force;

45. It is nevertheless important to note certain portions of the judgment of the Honourable Madam Justice McLachlin in RJR McDonald supra at p. 335;

> Care must be taken not to overstate the objective. The objective relevant to the s. 1 analysis is the objective of the infringing measure, since it is the infringing measure and nothing else which is sought to be justified. If the objective is stated too broadly, its importance may be exaggerated and the analysis compromised. As my colleague has noted, the Tobacco Products Control Act is but one facet of a complex legislative and policy scheme to protect Canadians from the health risks of tobacco use. However, the objective of the impugned measures themselves is somewhat narrower than this. The objective of the advertising ban and trademark usage restrictions must be to prevent people in Canada from being persuaded by advertising and promotion to use tobacco products. The objective of the mandatory package warning must be to discourage people who see the package from tobacco use. Both constitute important objectives, although the significance of the targeted decrease in consumption is reduced by the government's estimate that despite the ban, 65% of the Canadian magazine market will contain tobacco advertisements, given that the ban applies only to Canadian media and not to imported publications.

46. It is difficult to see how the prohibition on the forming unions is connected at all to the laudable purpose; therefore the government cannot ever pass the first test, which is usually the easiest for it;

PROPORTIONALITY

47. The above is a "fortiori" true of proportionality; how can a ban on the formation of a union be proportional to any lawful purpose?

48. At p. 343, 344 of RJR McDonald, supra, McLachlin J. said:

> As this court has observed before, it will be more difficult to justify a complete ban on a form of expression than a partial ban: Ramsden v. Peterborough (City), supra, at pp. 1105-1106 S.C.R.; Ford v. Quebec (Attorney General), supra, at pp. 772-773 S.C.R. the distinction between a total ban on expression, as in Ford where the legislation at issue required commercial signs to be exclusively in French, and a partial ban such as that at issue in Irwin Toys, supra, is relevant to the margin of appreciation which may be allowed the government under the minimal impairment step of the analysis. In Rocket, supra, the law imposed a complete advertising ban on professionals seeking to advertise their services. I concluded that while the government had a pressing and substantial objective, and while that objective was rationally connected to the means chosen, the minimal impairment requirement was not met since the government had exceeded a reasonable margin of appreciation given the need for consumers to obtain useful information about the services provided. A full prohibition will only be constitutionally acceptable under the minimal impairment stage of the analysis of where the government can show that only a full prohibition will enable it to achieve its objective. where, as here, no evidence is adduced to show that a partial ban would be less effective than a total ban, the justification required by s. 1 to save the violation of free speech is not established.

49. In Ville de Montréal v. Cabaret Sex Appeal supra, Tyndale J.A. said at p. 2142:

> There is disproportion, in my opinion, between the effects of the measures and the objective. As the judge pointed out, there is no evidence that the images do any harm; the Supreme Court has upheld the celebration of human sexuality. A total ban of a lawful form of expression is out of proportion to the subject of complaint; the remedy is worse than the disease. It is an effort at thought control, at the suppression of improper opinions. What will they be banning next?

50. In short, it is not permitted for the state to use a general laudable purpose for the purpose of justifying excessive and stifling particular measures which are not necessary for the purpose; one can say either that the "laudable goals" do not extend so far or that the result can never pass the next test, that of proportionality;

51. There is no evidence that unionized forces are less disciplined, less secure or less loyal, nor that their productivity is any lower;

52. It is not clear why such differences as exist between the RCMP and other forces would justify a ban on unions;

53. In Gingras v. Canada, [1994] 2 F.C. 734 at p. 758, Décary J.A. said:

> I am not saying that members of the RCMP are employees like any others. It is clear that both in the ordinary law and in Canadian statutory law, as a consequence of their method of appointment, their oath and their code of discipline, they form a class apart. I am simply saying that this special status does not deprive them of their status as employees for the purposes of statutes relating to the organization of the federal Government: they may be special employees, but they are still employees.

54. In many cases, the proportionality argument is presented as a calculus in which one weighs the loss of freedom (which is always a serious matter) against the beneficial affect, which must be real and important to prevail:

Dagenais v. Société Radio Canada, supra;

Radio-Canada v. AG. N.B., [1996] 3 S.C.R. 480;

55. Under this test, the government necessarily fails in the present case; the deprivation of important rights brings about no tangible benefit;

MINIMAL IMPAIRMENT

56. The test for minimal impairment is frequently considered together with proportionality; Libman, supra;

57. In Zundel (No. 2) (supra) at page 36, McLachlin, J. expressed the rule of minimal impairment in a manner perfectly suitable to the present case;

> Justification under s. 1 requires more than the general goal of protection from harm common to all criminal legislation; it requires a specific purpose so pressing and substantial as to be capable of overriding the Charter's guarantees. To apply the language used by Sopinka J. in Butler (at pp. 158-9 C.C.C., pp. 478-9 D.L.R.), s. 181 cannot be said to be directed to avoidance of publications which "seriously offend the values fundamental to our society", nor is it directed to a "substantial concern which justifies restricting the otherwise full exercise of freedom of expression."

58. A recent decision of this Court Thomson Newspapers vs. A.G. Canada, 25593 illustrates the difficulty faced by the Government when less intrusive means are possible;

59. In the present case, a number of obvious measures could achieve any laudable purpose of the law - restrictions on picketing and strikes, special provisions for confidentiality, provisions for arbitration and for exceptional duties in emergencies; these types of measures are already used in other similar situations in labour relations;

60. There is no reason to destroy totally the right to an independent union; this point was made by Baudoin J.A. in dissent;

61. Even in as serious a situation as that in Attis v. Board of Trustees, [1996] 1 S.C.R. 825, those portions of the restriction which were not necessary were struck down (p. 884); this despite the disgraceful nature of the protagonist's message in that case;

62. It must be remembered that much of national security, potentially the most sensitive area of concern, has been taken away from the RCMP by legislation and given to CSIS, a civilian agency;

63. Paradoxically, CSIS members are normal members of the public service and therefore have the right to belong to a public service union;

64. It is therefore impossible to justify a total ban here any more than a total ban on political activity could be justified in Osborne; more specific and limited restrictions would fully achieve any legitimate purpose;

65. The very far-reaching restrictions on individual freedom in the legislation and Discipline Code governing the RCMP makes justification particularly difficult;

66. It leaves RCMP members open to irresistible pressure from the government and to arbitrariness; this type of result is precisely what the Charter is intended to prevent;

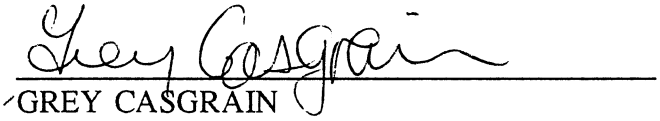
R. v. Smith, [1987] 1 S.C.R. 1045 especially at p. 1081;

67. It is therefore impossible to justify depriving them of a union, contrary to their Charter rights;

CONCLUSION

Intervenant respectfully submits that the appeal should be allowed and the impugned legislation be set aside; the constitutional questions should be answered positively as to violation and negatively as to applicability of Sec. 1;

MONTREAL, this 18th day of August 1998



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LIST OF AUTHORITIES

Doctrine:

Jurisprudence:

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23 day of September 1998
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Ad Québec

Service hereof admitted this
23 day of September 1998
M. L. Maw for A. Raven
~~Ottawa Agents~~ for Public Service Alliance
Solicitors of Canada, Intervenors

Service hereof admitted this
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