No. 26789

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA)

BETWEEN:

BRITISH COLUMBIA HUMAN RIGHTS COMMISSION, COMMISSIONER OF INVESTIGATION AND MEDIATION, THE BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL and ANDREA WILLIS

APPELLANTS
(RESPONDENTS)

AND:

ROBIN BLENCOE

RESPONDENT
(PETITIONER)

AND:

IRENE SCHELL

INTERVENER
(INTERESTED PARTY)

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PART I

STATEMENT OF FACTS

1. This Respondent accepts the facts as set out in the factums of the Appellants and of the Intervener Irene Schell.

PART II

ISSUES ON APPEAL

2. The Attorney General of British Columbia intervenes in this case for the purpose of making argument with respect to the following questions:

A. Are the B.C. Human Rights Commission and Human Rights Tribunal agents of government for the purposes of the *Canadian Charter of Rights and Freedoms*?

B. Are stigma and personal discomfort resulting from the publicity surrounding a private complaint before an administrative tribunal properly characterized as a state-caused deprivation of security of the person?

C. Is a stay of proceedings an appropriate remedy where a violation of security of the person results from delay in the adjudication of a private complaint?

3. In respect of other issues, the Attorney General of British Columbia broadly supports the positions of the Appellants and the Intervener Schell, and will refrain from repeating their arguments.

PART III

ARGUMENT

A. Are the B.C. Human Rights Commission and Human Rights Tribunal agents of government for the purposes of the *Canadian Charter of Rights and Freedoms*?

4. The emphasis of the appellant in this case is on the harm said to have befallen him as a result of continuing publicity in relation to allegations of sexual harassment against him. Although he is the subject of at least four such complaints (one of which is apparently the subject of a pending civil suit in the Supreme Court of British Columbia), this case concerns only the two allegations that resulted in complaints to the British Columbia Human Rights Commission.

5. Throughout his factums, the appellant treats this case as if it were a prosecution brought against him by the state. This characterization does not accord with the scheme of the *Human Rights Code* R.S.B.C. 1996, c. 210. The Commission operates as an adjudicative body, not as a prosecutor. Under part 3 of the *Code,* the Commissioner of Investigation and Mediation, after receiving a complaint, performs an investigation and either dismisses the complaint or refers all or part of it on to the Human Rights Tribunal for hearing.

6. The role of the Commissioner of Investigation and Mediation is clearly of a *quasi*-judicial nature. She does not initiate complaints, nor does she have the power to compromise them. Her function is to investigate and determine whether there is sufficient validity to the complaint to warrant referral to the Tribunal for a full hearing.

7. The Commissioner of Investigation and Mediation is frequently called upon to investigate and rule upon complaints brought against the government of the Province. Indeed, both Willis and Schell included the government of British Columbia as a respondent to their complaints. The government of British Columbia remains a respondent in the Willis case.

8. Both the Commissioner of Investigation and Mediation and the Human Rights Tribunal are adjudicative bodies that require a large degree of independence from government. Their functions are of a judicial nature; they resolve disputes of a particular type, either through processes designed to facilitate agreements between the disputants, or through decisions following quasi- judicial hearings.

9. Section 32 of the *Charter* provides that

> 32. (1)This Charter applies
>
> a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
>
> b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

10. In speaking of "the government of each province", section 32 refers to the Executive Branch of government. The phrase does not include the courts. In *Retail, Wholesale and Department Store Union v. Dolphin Delivery*, [1986] 2 S.C.R. 573 at 600-01this Court specifically held that the *Charter* does not generally apply to purely private litigation. McIntyre J., speaking for the majority, said:

> While in political science terms it is probably acceptable to treat the courts as one of the three fundamental branches of Government, that is, legislative, executive, and judicial, I cannot equate for the purposes of *Charter* application the order of a court with an element of governmental action. This is not to say that the courts are not bound by the *Charter*. The courts are, of course, bound by the *Charter* as they are bound by all law. It is their duty to apply the law, but in doing so they act as neutral arbiters, not as contending parties involved in a dispute. To regard a court order as an element of governmental intervention necessary to invoke the *Charter* would, it seems to me, widen the scope of *Charter* application to virtually all private litigation. All cases must end, if carried to completion, with an enforcement order and if the *Charter* precludes the making of the order, where a *Charter* right would be infringed, it would seem that all private litigation would be subject to the *Charter*. In my view, this approach will not provide the answer to the question. A more direct and a more precisely-defined connection between the element of government action and the claim advanced must be present before the *Charter* applies.

More recently, in *Regina v. Domm* 31 O.R. (3d) 540 (Ont. C.A.), Doherty, J.A. speaking for a unanimous court, made a similar point:

> A court order is not a government action within the meaning of s. 32(1) of the Charter. While courts are duty-bound to apply the Charter, the Charter is not designed to constrain judicial conduct in the same way it restrains legislative activity. Even though court orders may attract Charter scrutiny depending on their nature and the context in which they are made (Hogg, Constitutional Law of Canada, supra, pp. 843-45), compliance with the Charter cannot be seen as a mandatory condition precedent to the exercise of judicial authority in the same way as it is in respect of legislative activity.

11. The *Human Rights Code* provides for what is, in effect, a private claim for damages arising out of discrimination. The proceedings are akin to tort claims before a court, and the role of the Commissioner of Investigation and Mediation and of the Tribunal are best described as being judicial in nature.

> See: *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181

12. We have, then, in this case, three factors that render the *Charter* not directly applicable to the tribunals in question:

A. The tribunals in question are tribunals which are required to be independent of the government. Indeed, they adjudicate disputes in which the government may be a party.

B. The tribunals in question must act judicially. Their functions are analogous to those exercised by courts of law.

C. The challenge in this case is not to the tribunals' rules, or to any statutory provisions that might be said to be within the legislative sphere.

Under the circumstances, it is appropriate to characterize the appellant tribunals in this case as part of the judicial branch of government rather than as part of the executive branch. Just as the *Charter* does not directly apply to the courts in the context of purely private civil litigation, it should be found to be inapplicable to these tribunals in the context of a private complaint

between the Appellant Willis and the Intervener Schell, on the one hand, and the Respondent Blencoe on the other.

13. The presence of the Crown as a respondent in the complaints does not take them outside of the realm of "purely private litigation". No one suggests that any actions of the Crown as respondent in the complaints contributed in any way to delay in having the matters heard.

14. In criminal cases, the courts hold that the Crown bears responsibility for certain delays of an "institutional" nature that are attributable to deficiencies in the resources available to the judicial branch. This responsibility, however, is firmly founded in the fact that criminal charges are prosecuted by and on behalf of the state. It is the state interference with the interests of an accused that engages the *Charter* rather than simply state funding of courts.

Regina v. Askov, [1990] 2 S.C.R. 1199

15. The degree to which Crown involvement prerequisite to the application of the *Charter* can be illustrated by reference to the recent judgment of this Court in *New Brunswick (Minister of Health and Community Services) v. G.(J.)* (September 10, 1999), S.C.C. No. 26005. The issue in that case was whether the state had an obligation to provide counsel to an indigent parent where the Crown initiated proceedings to take custody of a child. The Court held that there was an obligation to provide counsel. The court based its decision, however, not on the simple fact that the court was determining issues of child custody, but rather on the fact that the Crown had initiated the proceedings. Nothing in the judgment suggests that the same obligations on the state to provide counsel would arise in the context of a private custody dispute, such as one that might arise between parents.

16. Even if this Court were to find that the role of the Crown in funding adjudicative bodies engaged the *Charter*, it would be necessary to analyze the degree to which the actions of the Crown resulted in delays in this case.

17. In particular, it would be necessary to differentiate between delays resulting from resource deficiencies and those resulting from the actions of the independent tribunals. It would not be appropriate for the Court to attribute delays resulting from inappropriate procedures, inefficient investigation methods, or substantially flawed decisions to "the state". Such delays are attributable to the independent tribunals, which, as argued above, are properly characterized as part of the judicial branch of government.

18. In reaching its conclusions, the majority of the Court of Appeal failed to differentiate between delays attributable to resource deficiencies and those attributable to the manner in which the Commissioner chose to exercise her functions. Indeed, the Court of Appeal appears to have considered the issue of whether or not the tribunals had sufficient resources to be inconsequential, with the Chief Justice stating that he doubted "the relevance of the resources available to the Commission."

Reasons for Judgment of the Court of Appeal, paragraph 51

19. In this case, the proceedings began with complaints that were (or were arguably) late in being made. Under the statute, the Human Rights Council was required to determine whether they were made in good faith and whether there was prejudice to the respondent. There is no suggestion that this process was delayed for lack of resources; it involved a number of letters to the various parties, and an adjudication. The learned chambers judge did not find the time taken on this decision to be unreasonable.

20. There followed a 5 month period that is unexplained in the evidence.

21. Thereafter, an investigation took place, involving interviews and an open exchange of information between the Commission and the several parties. The learned Chief Justice in the Court of Appeal stated that "These kinds of disputes are quickly resolved by courts and tribunals all the time, and there are no complex legal or factual issues." He considered that, because of a

lack of eyewitnesses, the matter was a simple matter of credibility. He considered that the investigation should have taken less than a week.

22. It is apparent that the learned Chief Justice considered the processes adopted by the Commission to be overly-elaborate, involving as they did interviews with several parties and exchanges of information. There is no suggestion that the Commissions decision to investigate as it did was a matter attributable to a lack of resources; indeed, it is patently clear that a more perfunctory investigation of the sort contemplated by the Honourable Chief Justice would have been less demanding of resources than was the investigation that actually took place.

23. The decisions of the tribunal as to how it chose to investigate the complaints ought to be seen as decisions of an independent quasi-judicial body that is not directly subject to the *Charter*. The manner and sufficiency of its investigations are not matters that are or should be controlled by government (particularly in investigations where the government is a respondent).

24. While there is some mention in the learned Chambers judge's reasons suggesting that resources were a factor in the delays, this is not particularized. For his part, the Respondent relies on annual reports of the Human Rights Commission (and, to a larger extent, of its federal counterpart) stating that, generally, the Commissions consider themselves in need of greater resources.

25. It is submitted that on the facts of this case, it is not possible to attribute any lengthy period of delay to resource deficiencies. As the learned Chambers judge found, there was only a limited period (of five months) in which nothing occurred. At other times, while progress may have been slow due to the elaborate procedures adopted by the Commission, there is no indication that a lack of resources hindered investigations.

26. In any event, despite his allegation that the Human Rights Commission suffers from a lack of resources, the respondent does not suggest that this results in widespread violation of

section 7 of the *Charter*; his allegation is that his case ought to have been treated differently from others because his high profile and the notoriety of the complaints against him engaged section 7. His position is that most cases before the Human Rights Commission and the Human Rights Tribunal do not engage the *Charter*. He is undoubtedly correct in this latter assertion.

27. If only a small minority of cases before the Human Rights Commission engage section 7 of the *Charter*, it is difficult to attribute delays in those cases to resource deficiencies. Even if all of the Respondent's allegations with respect to the Commission's resources were accepted, it could not be said that the Commission lacked resources to fulfill its duties under the *Charter*. At worst, it would have had to divert some small amount of resources from the vast bulk of its cases – cases that did not raise issues of security of the person – in order to expedite the Respondent's case. Any decision not to divert such resources must have been a decision of the independent commission rather than a decision of the Crown.

28. To summarize, this is not a case in which the *Charter* is engaged. Human rights disputes before the Human Rights Commission and Human Rights Tribunals are properly characterized as purely private litigation. The Commission and Tribunal are properly characterized as being part of the judicial branch of government, and not parties coming within section 32 of the *Canadian Charter of Rights and Freedoms*.

29. Because this is not a case in which it can be said that the "government" (as that word is used in section 32) is interfering with the Respondent's security of the person, this is not a case in which "institutional delay" engages *Charter* scrutiny. In the alternative, if the *Charter* is, in some manner, engaged, then it is only the allocation of resources to the tribunals that can properly be labelled as an action of government.

30. The fact that the *Charter* is not engaged should not be taken as meaning that the actions of the Human Rights Commission and Human Rights Tribunal are beyond judicial supervision. As inferior tribunals, both bodies are subject to the supervisory jurisdiction of the courts.

Further, well-established administrative law principles (which were considered in this case by the Supreme Court of British Columbia) deal adequately with delay in the context of administrative hearings. Manifestly, neither tribunals nor private parties are permitted to act oppressively toward a disputant. In this case, the learned Chambers judge found that there had been nothing "oppressive" in the actions of the Commission.

B. Are stigma and personal discomfort resulting from the publicity surrounding a private complaint before an administrative tribunal properly characterized as a state-caused deprivation of security of the person?

31. The appellant seeks to analogize the human rights complaint process to a criminal prosecution. He argues, for instance, that the stigma and personal affront resulting from unresolved human rights complaints for sexual harassment can be likened to criminal charges of sexual assault.

32. The Respondent's near-exclusive focus on the harm he has allegedly suffered serves to obscure critical differences between criminal prosecutions and human rights complaints. The role of the state in the resolution of human rights complaints is not closely analogous to its role as a prosecutor in criminal cases. Equally, the inherent need for public denunciation in the criminal process sharply differentiates prosecutions from the processing of civil complaints.

33. This court has recently considered the manner in which anxiety and stress relate to "security of the person" in section 7 of the *Charter*. It has recognized that in determining whether section 7 rights are engaged, the "quality" of the state activity that causes harm is important. In *New Brunswick (Minister of Health and Community Services) v. G.(J.)* (September 10, 1999), S.C.C. No. 26005, the Chief Justice, speaking for the entire court on this point stated (at paragraphs 61-64):

> I have little doubt that state removal of a child from parental custody pursuant to the state's *parens patriae* jurisdiction constitutes a serious interference with the psychological integrity of the parent. ... Besides the obvious distress arising from the loss of companionship of the child, *direct*

> *state interference* with the parent-child relationship, through a procedure in which the relationship is subject to state inspection and review, is a gross intrusion into a private and intimate sphere. Further, the parent is often stigmatized as "unfit" when relieved of custody.
>
> ...
>
> Not every state action which interferes with the parent-child relationship will restrict a parent's right to security of the person. For example, a parent's security of the person is not restricted when, without more, his or her child is sentenced to jail or conscripted into the army. Nor is it restricted when the child is negligently shot and killed by a police officer.: see *Augustus v. Gosset*, [1996] 3 S.C.R. 268.
>
> While the parent may suffer significant stress and anxiety as a result of the interference with the relationship occasioned by these actions, the quality of the "injury" to the parent is distinguishable from that in the present case. In the aforementioned examples, the state is making no pronouncement as to the parent's fitness or parental status, not is it usurping the parental role or prying into the intimacies of the relationship. In short, the state is not *directly interfering* with the psychological integrity of the parent *qua* parent. The different effect on the psychological integrity of the parent in the above examples leads me to the conclusion that no constitutional rights of the parent are engaged. [Emphasis added]

34. The harm which the Respondent claims to have suffered should not be found to amount to a denial of "security of the person" for the purposes of section 7. This is both because human rights complaints are not state-sponsored, and because the stigma and humiliation suffered by a person in the Respondent's situation is not an integral part of the human rights process, but rather a product of an independent evaluation of information by members of the public.

35. The first issue (state sponsorship) goes to whether the harm suffered by the Respondent can properly be attributed to governmental acton. Cases such as *G.(J.)* or *Morgentaler* involved direct governmental interference with psychological integrity. In contrast, in the case at bar, the only governmental activity is the provision of a dispute resolution process.

36. This is not to deny that in some circumstances, the actions of the parties (or even the media on its own initiative) may raise the profile of a civil dispute to the point where relentless public curiosity and attention can adversely affect a defendant. It is not appropriate, however, to

attribute the resulting stigma, anxiety, and discomfort to "governmental action". The governmental action and interest in human rights complaints is limited; any interference with psychological integrity is a result not of the process itself. Rather, it is brought about by non-governmental actors, such as the complainants, newspapers, employers and soccer associations.

37. In this respect, there is a vast gulf between criminal proceedings and civil proceedings (including human rights proceedings). In a criminal proceeding, the Crown prosecutes; it is the state itself that levies accusations against the accused. The state controls the allegations made in a criminal proceeding, and decides on the presentation of the case.

38. Further, public denunciation is not a by-product, but rather is a central feature of the criminal process. In order to serve goals of retribution and general deterrence, it is essential that stigma attach to criminal activity. When the Crown makes allegation of criminal conduct against a person, it necessarily stigmatizes that person; indeed the criminal process sets out to prove moral blameworthiness, and to subject a wrongdoer to punishment.

> *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 at 932-33 per Dickson C.J.C. speaking for the majority)
>
> see also *Regina v. Wigglesworth*, [1987] 2 S.C.R. 541

39. A person charged with a criminal offence, then, suffers humiliation and anxiety by the very fact of being connected by the Crown to criminal activity. While the harm to an accused's "security of the person" may be exacerbated through the actions of third parties, it can be traced directly to government action.

40. In contrast to criminal prosecutions, processes for civil claims (including human rights complaints) focus on compensation for those who suffer a loss. Blameworthiness of the defendant is not essential to a successful claim, and the state has no interest in publicizing the proceedings beyond those interests connected with openness of the justice system.

41. It is not appropriate to hold the government responsible for harms that occur solely through unprovoked actions of third parties who are not in any sense acting as agents of the state. This is particularly true where the connection between any state activity and the actions causing harm is tangential. In the case at bar, the adverse publicity that lies at the root of the Respondent's complaints has little to do with the human rights complaint process. Rather, it is a product of either legitimate public interest in political matters or of bizarre public fascination with matters of a prurient nature. Neither of these public interests is encouraged by the governmental activity in issue, nor is there a direct connection between them and the human rights process.

42. In the Court of Appeal, the Chief Justice dismissed arguments to the effect that the human rights process was a non-penal one and hence relevantly different from a criminal prosecution. He said:

> Despite the often heard characterization of human rights adjudication as a mediative and conciliatory process aimed at remedying discrimination and making the victim whole as opposed to punishing the perpetrator, the fact remains that unproven charges of sexual harassment and sexual discrimination are, in our society, charges accompanied by high stigma. Such charges have the power to destroy lives. All the characterization in the world will not change the essential nature of these charges.
>
> Reasons for Judgment of the Court of Appeal, paragraph 58

43. It is submitted that the Chief Justice is guilty of an equivocation in describing the situation as one in which the Respondent faces "unproven charges of sexual harassment and sexual discrimination". If by "charges", the learned Chief Justice means allegations by the state, he mischaracterizes the situation. There are no "charges" of that sort in this case. If, on the other hand, he is using the word "charges" as a synonym for "allegations", the connection to the "human rights adjudication" is minimal. Whether or not a human rights process existed, the Respondent would face unproven allegations of sexual harassment and discrimination.

44. In fact, it seems likely that the harm suffered by the Respondent is most closely associated with the unproven allegations of Ms. Yanor, who did not file a complaint under the *Human Rights Code*, nor commence a civil proceeding.

45. The indirectness of any connection between the Respondent's suffering and governmental action is not a mere technical argument against the application of section 7 of the *Charter* to this case. Rather, it explains the practical difficulties in expecting a *Charter* remedy to have any great effect on the suffering allegedly suffered by the respondent. His problems do not stem from the existence of the human rights complaints, but rather from the association in the minds of members of the public between the respondent and sexual harassment. Because of the greater publicity given to the Yanor complaint than to the other three complaints, it is entirely likely that the public connection between the respondent and sexual harassment has little to do with the Willis and Schell matters. As the learned Chambers Judge observed:

> There can, however, be no doubt about the extent to which allegations of sexual harassment have affected Mr. Blencoe's life and that of his wife and three young children, although it is difficult to say to what extent such can be fairly attributed to the time it has taken to bring the complaints made by Ms. Schell and Ms. Willis to hearings.

Reasons for Judgment of the Supreme Court, paragraph 11

46. There is also no reason to believe that a stay of the human rights proceedings against the respondent will protect him from future adverse publicity. The events giving rise to adverse publicity (the initial revelation of the complaints, the Respondent's departure from politics, the discovery of the respondent's history by persons in Ontario, the return of the Respondent to Victoria) have little connection to the ongoing human rights process.

47. It is true, of course, that publicity is likely to surround a hearing by the Human Rights Tribunal in these matters. That publicity, however, is unrelated to any delays in the process. Whether or not the hearing is held in a timely manner, the publicity surrounding it will occur. In any event, because the Willis complaint is set to proceed against the Crown on the basis of vicarious liability, it is not at all clear that publicity will be diminished by a stay of the complaint

as against the Respondent. There will still be an open hearing at which details of the allegations will be canvassed, and it is even likely that the Respondent would be called as a witness on those proceedings.

48. In short, the indirectness of any link between government action and any harm suffered by the Respondent makes a remedy directed at that government action an extremely blunt instrument by which to alleviate that harm. Because it is not government action that lies at the root of the difficulties faced by the Respondent, control of government action is unlikely to assist in eliminating those difficulties.

C. Is a stay of proceedings an appropriate remedy where a violation of security of the person results from delay in the adjudication of a private complaint?

49. It is submitted that, in any event, the judgment of the British Columbia Court of Appeal does not accord appropriate consideration to the interests of the complainants in granting a stay of proceedings

50. The interests of the complainants are relevant to this case in two regards. First, in determining whether or not the delays seen here violate the principles of fundamental justice, the complainants' interest should be taken into consideration. This should be part of the internal balancing process of section 7 of the *Charter*.

Cunningham v. Canada [1993] 2 S.C.R. 143

51. The interests of the complainants should also have been taken into account in fashioning an appropriate remedy for any *Charter* violation. The Court of Appeal found that a stay was appropriate only by subordinating the rights and interests of the complainants to those of the Respondent. In fashioning a remedy under section 24 of the *Charter*, courts must be more cognizant of the rights of third parties.

52. The failure of the Court of Appeal to give due consideration to the interests of the complainants is apparent on the face of the Chief Justice's reasons. He stated, at paragraph 39 of his judgment:

> I wish to add that I have not overlooked the interests of the complainants. They, of course, are anxious to have their complaints determined. In such matters the law cannot accommodate everyone, and regrettable as it may be, the legal rights of a party must be given precedence over the concerns of others.

The statement dismisses the interests of the complainants as "anxiety to have their complaints determined", and distinguishes such anxiety from a "legal right". The court's treatment of the complainant's interest may have been appropriate if this had been a criminal prosecution. The complainant's interests here, however, are both more direct and more tangible than those of a complainant in a criminal case. The court wrongly ignored their interests.

53. A stay of proceedings may be a most appropriate remedy in criminal proceedings, where the interest in proceeding with a prosecution is a "state interest". Where third party interests are at stake, however, a more sensitive approach is required. An obvious example occurred in the case of *New Brunswick (Minister of Health and Community Services) v. G.(J.)* (September 10, 1999), S.C.C. No. 26005. In that case, this court found that proceeding with a hearing in which the state was seeking to take custody of a child for the purposes of child protection would violate the *Charter* rights of the parent unless state-funded counsel was provided.

54. In criminal proceedings where a court concludes that an accused's *Charter* rights will be violated unless state-funded counsel is provided, the courts have generally imposed a stay of proceedings until such time as counsel is made available. In the *G.(J.)* case, it was recognized that the interests of the child rendered such a remedy completely inappropriate.

55. It is submitted that it is similarly inappropriate to remedy allegedly state-caused delay by dismissing what is essentially a private action.

56. It must be recognized as well that the *Charter* right at stake here is not the section 11(b) right that was at issue in *Askov*. The right to be tried within a reasonable time cannot be protected by allowing a prosecution to proceed after a reasonable time has passed. On the other hand, the right not to be deprived of security of the person except in accordance with the principles of fundamental justice is not necessarily inconsistent with allowing a hearing to proceed.

57. Where a person charged with an offence seeks a stay of proceedings for a violation of section 11(b) of the *Charter*, the *Charter* violation is, in part prospective. Nothing short of a stay will prevent a further violation of the accused's rights by the state. In contrast, there is no clear prospective component to the respondent's complaints in the matter at bar. It is not at all apparent that holding a hearing expeditiously will result in any deprivation of security of the person that is not in accordance with the principles of fundamental justice. Any "extra" loss of security of the person attributable to delay has already occurred.

58. It is submitted that the appropriate remedy for any *Charter* violation in this case is an order expediting the hearing by the Human Rights Tribunal. Such a remedy is perfectly tailored to the nature of the alleged *Charter* violation.

59. It should also be recognized that the common law tradition of placing no onus on an accused in a criminal case precludes the imposition of any demands on the accused that he or she act to press a matter on for hearing. This consideration does not apply to civil proceedings. Defendants invariably have the same rights as plaintiffs to set matters down for hearing and to seek to have matters expedited. There is no incongruity in expecting a defendant who claims that his or her fundamental rights are violated by delays to seek to expedite proceedings in any manner properly open to him or her, including an application for a *Charter* remedy.

60. An appropriate *Charter* remedy for a defendant who apprehends that his *Charter* rights will be violated by delays, then, is an order expediting a hearing. While it is not reasonable or in

accordance with the philosophical traditions of the common law to expect an accused person to force a prosecution to an early trial date, there can be no objections to expecting a defendant in a civil case to move for an early hearing.

61. It is therefore submitted that the only appropriate remedy for any *Charter* violation that may be found in this case is an order that the Human Rights Tribunal proceed expeditiously with its hearings.

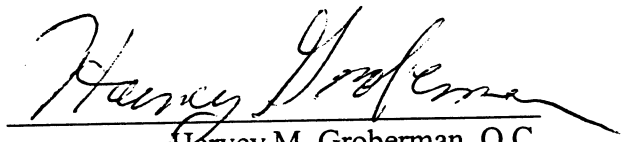
PART IV

NATURE OF ORDER SOUGHT

62. This intervener seeks an order allowing the appeal and restoring the judgment of the learned Chambers judge.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Victoria, British Columbia, this 5th day of October, 1999.



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PART V
TABLE OF AUTHORITIES