Court File No. CV-21-00665288

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION ON ITS OWN BEHALF AND ON BEHALF OF THE MEMBERS OF THE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, AND LESLIE WOLFE

Applicants

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE ATTORNEY GENERAL OF ONTARIO

Respondent

and

THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Moving Party

APPLICATION UNDER Rule 14.05(3) of the *Rules of Civil Procedure* and the *Canadian Charter of Rights and Freedoms*, ss. 1, 3, 24, 33, *Constitution Act, 1982*, s. 52 and *Constitution Act, 1867*, preamble

FACTUM (MOTION IN WRITING) OF THE MOVING PARTY CANADIAN CIVIL LIBERTIES ASSOCIATION

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I - OVERVIEW

1. This Application arises from a decision of the Superior Court of Justice dated June 8, 2021 in *Working Families Ontario v. Ontario*, wherein Justice Morgan held that sections 1(1), 37.0.1, 37.10.1(2), 37.10.1(3), 37.10.1(3.1) and 37.10.2 of Ontario's *Election Finances Act*[1] (collectively the "Impugned Provisions") are unconstitutional and of no force and effect because they infringe section 2(b) of the Canadian *Charter of Rights and Freedoms*[2] and are not justified under section 1.[3]

2. Shortly after Morgan J.'s decision, the Impugned Provisions were re-enacted by the Ontario government in the ironically titled *Protecting Elections and Defending Democracy Act, 2021*.[4] Section 4 of *PEDDA* invokes the notwithstanding clause, with the effect that the Act is declared to operate irrespective of sections 2 and 7 to 15 of the *Charter*.[5]

3. The Applicants have commenced the Application on the basis that the Impugned Provisions violate section 3 of the *Charter*, cannot be saved under section 1, and are not subject to the notwithstanding clause. The Canadian Civil Liberties Association ("**CCLA**") seeks to intervene in the Application to protect the informational component of the right to vote.

4. The EFA represents a profound departure from the approach to regulating third-party advertising in Canada. Traditional regulation of third-party advertising in Canada has been limited to the election period that commences with the issuance of the election writ and usually runs for

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1 RSO 1990, c E. 7, as amended.

2 Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

3 2021 ONSC 4076 (CanLII) [*Application Decision*], Book of Authorities of the Moving Party, the Canadian Civil Liberties Association ("BOA"), tab 18.

4 SO 2021, c. 31 [*PEDDA*].

5 *Ibid*. at s. 4.

several weeks until election day.[6] By contrast, the EFA regulates third-party advertising for a full year prior to an election period.[7] In a regime with fixed date elections every four years, this means that political expression is regulated for more than one out of every four years. The Applicants successfully challenged the constitutionality of an earlier version of this legislation pursuant to sections 2 (b) and (d) of the *Charter*. The CCLA played an active role in the challenge as an intervener. The government responded by taking the extraordinary step of invoking the notwithstanding clause, for the first time in Ontario history.

5. The renewed application challenges the EFA, as amended by *PEDDA*, on the basis of section 3 of the *Charter*, which encompasses the rights to effective representation and meaningful participation, and which is not subject to the notwithstanding clause.[8] The Application invites the court to consider whether the Impugned Provisions, which have already been found to be unconstitutional, undermine the informational component of the right to vote by constraining the ability of third parties to engage in discussion of government policies for a thirteen month period prior to an election.

6. The CCLA seeks to intervene in the Application to defend the public interest in the free flow of information, which is essential to a robust public discourse and informed voting. The Impugned Provisions compromise the free exchange of ideas that is the lifeblood of our political institutions, and undermine an individual's right to cast an informed vote.

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6 See C. Feasby, "Issue Advocacy and Third Parties in the United Kingdom and Canada" (2003) 48 McGill L.J. 11 at pp. 13-16, 51-52, Brief of Authorities of the Moving Party, the Canadian Civil Liberties Association ("BOA"), tab 19.

7 *PEDDA*, *supra* note 4 at s. 37.10.1(2).

8 *Charter*, *supra* note 2 at s. 33.

7. The CCLA meets the test for intervention as a friend of the Court for the purpose of rendering assistance to the Court by way of argument pursuant to Rule 13.02 of the *Rules of Civil Procedure*.

8. The CCLA has a long history of intervention in judicial proceedings that raise civil liberties issues and has frequently been granted leave to intervene in these types of proceedings – including, most importantly, the Applicants' successful application challenging these same provisions.[9]

9. This case raises important legal issues. CCLA considers the right to vote and participate meaningfully in the election process to be a cornerstone of the *Charter*, and perhaps the most vital civil liberty.[10] The outcome of this case has broad implications reaching beyond the immediate parties and will affect both the public and political discourse in general, as well as the voting rights of every individual in Ontario. Given that voting is a "cornerstone" of democratic governance, this case falls squarely into the work of CCLA's core mandate, and further, is precisely the type of case that is of interest to CCLA's diverse supporters.[11] The CCLA therefore wishes to contribute to this Court the benefit of its unique expertise and perspective.

10. The CCLA respectfully submits that its involvement as an intervener in this Application will make a useful contribution and will not result in any delay or prejudice to the parties.

II - BACKGROUND

A. THE CANADIAN CIVIL LIBERTIES ASSOCIATION

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9 *Working Families Ontario v. Ontario*, 2021 ONSC 3652 (CanLII) [*Motion for Leave to Intervene*], BOA, tab 17.

10 Affidavit of Cara Zwibel, affirmed July 27, 2021 (the "Zwibel Affidavit"), Motion Record of the Moving Party, Canadian Civil Liberties Association ("CCLA Motion Record"), tab 2, p. 15, para. 22.

11 Zwibel Affidavit, *ibid*., CCLA Motion Record, tab 2, p. 11, para. 8.

11. This Court has previously observed that "[t]he [CCLA], a national organization created in 1964, actively promotes respect for and the observance of fundamental human rights and civil liberties".[12]

12. The Ontario Court of Appeal has held that the CCLA "has substantial experience in promoting and defending the civil liberties of Canadians".[13] The defense of civil liberties and constitutional rights is not just one of the CCLA's various interests; it is its very mission. [14]

13. The CCLA has frequently been granted intervenor status in this Court and others to make submissions on matters within its expertise. It has contributed through its interventions to the development of Canadian law. Specifically, it has participated as an intervenor in a number of prominent cases dealing with democratic rights.[15]

14. To the extent that further background on the CCLA and its mandate is required, it may be found in the CCLA's Motion Record in the Affidavit of Cara Zwibel, Director of the Fundamental Freedoms Program for the CCLA, starting at paragraph 9.[16]

B. THE IMPACT OF THE EFA

15. The EFA substantially expands the regulation of third-party advertising in a manner that infringes the constitutionally guaranteed right to vote. The EFA, among other things, limits information exposure, which in turn renders a citizen's right to vote less meaningful and, in the

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[12] *Corporation of the Canadian Civil Liberties Association v. Ontario (Minister of Education)*, 1988 CanLII 4784 (ONSC) at p. 7, BOA, tab 4.

[13] *Canadian Civil Liberties Association v. Ontario (Attorney General)*, 2020 ONSC 4838 (CanLII) at para. 27, BOA, tab 3.

[14] *Tadros v. Peel Regional Police Service*, 2008 ONCA 775 (CanLII) at para. 3 [*Tadros*], BOA, tab 14.

[15] Zwibel Affidavit, *supra* note 10, CCLA Motion Record, tab 2, pp. 15-16, paras. 23-25.

[16] *Ibid*. at p. 11, para. 9.

process, compromises the right of those voters to a meaningful representation. Likewise, the EFA constrains the ability of voters to be engaged in the election process and the political discourse, which impairs their ability to properly exercise their franchise; not being able to do so makes it less meaningful.

16. The third-party advertising limits deprive the public of the full range of free political discourse. Especially troubling is that the third-party spending limits constrain the ability of individuals and groups to criticize and hold the government accountable through paid media. The essential role of non-government sources of information in holding government accountable in our political system was observed by Justice Cannon in *Reference re Alberta Statutes*:

> [N]o political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of the government. Freedom of discussion is essential to enlighten public opinion in a democratic State; it cannot be curtailed without affecting the right of the people to be informed through sources independent of the government concerning matters of public interest.[17] [emphasis added]

III - ISSUE

17. The sole issue on this motion is whether the CCLA should be granted leave to intervene as a friend of the Court.

IV - LAW & ARGUMENT

A. Applicable Law

18. Rule 13.02 governs motions to intervene by persons who seek to make submissions as a friend of the Court:

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[17] *Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] SCR 100 at pp. 145-146, BOA, tab 11.

> Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceedings, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.[18]

19. On a motion for leave to intervene, the Court will normally consider the following factors:

(a) the nature of the case;

(b) the issues involved;

(c) the likelihood that the proposed intervener can make a useful and distinct contribution to the resolution of the case; and

(d) whether the intervention will cause injustice to the parties.[19]

20. The Application is constitutional in nature and raises important civil liberties issues regarding the right to vote. In *Charter* cases, the scope for intervention is broader than in private disputes, as it is important for the court to receive a diversity of representations reflecting the wide-ranging impact of its decision.[20] An intervention in such cases is normally granted when one of three criteria are met by a proposed intervener:

(a) It has a real substantial and identifiable interest in the subject matter of the proceedings;

(b) It has an important perspective distinct form the immediate parties; or

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[18] *Rules of Civil Procedure*, RRO 1990, Reg. 194, r. 13.02.

[19] *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 OR (2d) 164 (CA) at 167 [*Peel*], BOA, tab 10; *Trinity Western University v. Law Society of Upper Canada*, 2014 ONSC 5541 (Div Ct) at para. 4, BOA, tab 16; *Elementary Teachers' Federation of Ontario v Ontario (Minister of Education)*, 2018 ONSC 6318 (Div Ct) at para. 8 [*ETFO*], BOA, tab 5.

[20] *ETFO ibid*. at para. 9, BOA, tab 5.

(c) It is a well-recognized group with a special expertise and a broadly identifiable membership base.[21]

21. The standard for an "interest" is flexible. Any interest in a proceeding is sufficient, subject to the Court's discretion.[22]

(i) The CCLA Has a Real, Substantial and Identifiable Interest in Political Expression and Election Law

22. The CCLA's work aims to defend and to ensure the protection and full exercise of fundamental human rights and civil liberties in Canada.[23] It has a demonstrated track record of interventions in the leading Supreme Court of Canada precedents that relate to the issues raised by the Applicants.[24]

23. CCLA's interest in this Application stems from its committed interest in promoting the robust protection of rights that are essential to democratic self-government, the reconciliation of civil liberties and other societal interests, and the promotion and protection of democratic rights in Canada.[25] The legislation at issue in this Application has the potential to compromise the legitimacy of Ontario elections by constraining the ability of third parties to engage in discussion of government policies for a thirteen-month period prior to an election.

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[21] *Bedford v. Canada (Attorney General)* (2009), 98 OR (3d) 792 (CA) at para. 2, BOA, tab 2; *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29 at para. 8, BOA, tab 12; *Ontario (Attorney General) v. Dieleman* (1993), 16 OR (3d) 32 (Gen Div), BOA, tab 9.

[22] *Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to intervene)*, [1989] 2 SCR 335 at p. 339 [*Reference re Workers' Compensation Act*], BOA, tab 13.

[23] Zwibel Affidavit, *supra* note 10, CCLA Motion Record, tab 2, p. 11, para 9.

[24] Zwibel Affidavit, *ibid*. at pp. 15-16, para. 25.

[25] Zwibel Affidavit, *ibid*. at pp. 11 and 14, paras. 10 and 21.

24. The CCLA has a real, substantial, and identifiable interest in the nexus of election laws and democracy, as demonstrated by its interventions in the following non-exhaustive list of cases:[26]

(a) *Frank v. Canada (Attorney General)*: A successful challenge of the constitutionality of the *Canada Elections Act*, which denied Canadian citizens resident abroad for five years or more the right to vote in a federal election unless and until they resume residence in Canada.[27]

(b) *Opitz v. Wrzesnewskyj*: A case considering whether an election in an electoral district should be annulled on account of "irregularities".[28]

(c) *Thomson Newspapers Co. v. Canada (Attorney General)*: A case considering whether a provision of the *Canada Elections Act* violates freedom of expression and the right to vote guaranteed by ss. 2(b) and 3 of the *Charter*. The impugned section prohibited the broadcasting, publication or dissemination of opinion survey results during the final three days of a federal election campaign.[29]

(d) *Mitchell v. Jackman*: A case in which the Court found that the special ballot provisions of Newfoundland's *Elections Act, 1991*, contravene the democratic right to vote guaranteed by section 3 of the Charter. The section 3 infringement cannot be saved by section 1 of the Charter.[30]

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26 Additional examples are provided in paragraph 25 of the Zwibel Affidavit, *ibid.* at pp. 15-16.

27 [2019] 1 S.C.R. 3, BOA, tab 6.

28 [2012] 3 S.C.R. 76, BOA, tab 8.

29 [1998] 1 SCR 877, BOA, tab 15.

30 2017 CanLII 58448 (NL SC), BOA, tab 7.

25. In addition to proceedings before the courts, the CCLA has extensive experience with making submissions to governments to ensure that there are no improper or unjustifiable barriers interfering with the fundamental right to vote.[31] CCLA has a particular interest in the *EFA*, as it has twice made submissions to the legislative committees reviewing the relevant amendments to the *EFA* at issue in the previous Application.[32]

26. The CCLA was furthermore granted intervenor status in the first challenge to the constitutionality of the *EFA*.[33] Writing for the Court, Justice Morgan made the following statements regarding the CCLA's expertise and participation as a friend of the Court:

> I have no hesitation in concluding that the nature of the present Application and the issues involved are well within the CCLA's area of interest and expertise. Given its history of interventions, there is little doubt that it will be able to make cogent submissions on the issues of political expression, association, and electoral regulation that this Application will raise. It is a public interest advocacy group whose participation as friend of the Court is unlikely to cause any particular prejudice to the Respondents whose position it opposes.[34]

27. The CCLA can be expected to bring a useful and different perspective to this Application by addressing the issues from the viewpoint of a national civil liberties organization. The CCLA is principally concerned about the larger development of the law as it affects democratic rights. It is not, like the Applicants, a trade union (or group associated with a trade union) that seeks to express itself through paid advertising in the 2022 Ontario election.[35]

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31 Zwibel Affidavit, *supra* note 10, CCLA Motion Record, tab 2, p. 16, para. 26.

32 *Ibid* at p. 18, para. 27.

33 *Ibid*. at pp. 14 and 19, paras. 20 and 28.

34 *Motion for Leave to Intervene*, supra note 9 at para. 6, BOA, tab 17.

35 Zwibel Affidavit, *supra* note 10, CCLA Motion Record, tab 2, pp. 13-14 and 20, paras. 17-18 and 31-32.

28. The CCLA's interest is distinct from the Applicants. The CCLA has been continually engaged in *Charter* litigation for decades and is well placed to offer a broad, national civil liberties perspective that differs from the perspectives of the parties and other interveners. Unlike the Applicants, the CCLA does not itself typically engage in political advertising.[36] The CCLA is therefore not seeking to intervene to protect its own activities. Rather, the CCLA seeks to intervene to defend the public interest in free and open debate on political matters as it relates to democratic rights.

29. Justice Morgan adopted these submissions in his decision granting the CCLA leave to intervene in the preceding application, writing as follows:

> The CCLA can be expected to bring a useful and different perspective to this Application by addressing the issues from the viewpoint of a national civil liberties organization concerned about the larger development of the law as it affects political expression. It is not, like the Applicants, a trade union (or group associated with a trade union) that wants to express itself in the politics of an upcoming election; its interest is discernably broader than that. Counsel for the CCLA explains that it seeks to place the present Application within an overall policy context that considers the appropriate balance between free speech and fair elections.[37]

(ii) The CCLA Has a Longstanding Interest and Expertise

30. Another important factor for the Court to consider is the likelihood that the proposed intervention will be of assistance to the Court in the resolution of the Application. That likelihood is in part a function of the experience and expertise of the proposed intervener. Proposed interveners with considerable experience in the subject matter of the proceeding should be able "to place the issues in a slightly different perspective" from that of the parties.[38] The courts have

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36 *Ibid.*

37 *Motion for Leave to Intervene*, *supra* note 9 at para. 10, BOA, tab 17.

38 *Peel*, *supra* note 19 at p. 168, BOA, tab 10.

highlighted the importance of having an intervener with "a longstanding interest and expertise" in the subject matter of the dispute.[39]

31. The CCLA is a well-recognized group. Since its founding in 1964, the CCLA has challenged legislation and intervened in courts across the country. It has acted on multiple occasions as a public interest party or as an intervener in legal proceedings involving fundamental rights and freedoms that affect a diverse range of people in Canada, including democratic rights.[40]

32. The CCLA's expertise has been acknowledged by the courts. By way of example, in *Tadros v. Peel Regional Police Service,* Associate Chief Justice O'Connor commented that the CCLA "has substantial experience in promoting and defending the civil liberties of Canadians."[41]

33. Justice Morgan expressly noted in his decision granting leave for the CCLA to intervene in the predecessor application that an intervention by the CCLA will serve to enrich the legal argument before the Court:

> I see a potential for enriching the legal argument, and see no potential for prejudice, in granting the CCLA the status that it requests in this Application. In my view, to do so will serve to enhance the public interest in resolving the Charter issues at stake.[42]

34. In fact, the CCLA's submissions on a principled approach to a section 1 analysis in the predecessor application were specifically mentioned in Justice Morgan's reasons:

> There is no justification or explanation anywhere in the Attorney General's record as to why the doubling of the pre-election regulated period was implemented. This lack of explanation has to be taken

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39 *2016596 Ontario Inc. v. Ontario*, 2003 CanLII 30021 (Ont CA) at para 14, BOA, tab 1, paras. 16-17.

40 Zwibel Affidavit, *supra* note 10, CCLA Motion Record, tab 2, pp. 11, 12, 13 and 15-18, paras. 9, 11, 15 and 23-26 and Exhibit A, p. 25.

41 *Tadros*, *supra* note 14 at para. 3, BOA, tab 14.

42 *Motion for Leave to Intervene*, *supra* note 9 at para. 12, BOA, tab 17.

> seriously. As counsel for the Canadian Civil Liberties Association points out, the subject of electoral design is one in which the incumbent government has a structural conflict of interest in that its interest in self-preservation may dominate its policy formulation.[43] [emphasis added]

(iii) No Prejudice to the Parties if the CCLA Is Granted Leave to Intervene

35. The CCLA's intervention will not cause injustice to any of the parties, jeopardize or delay the timetable for the hearing of the Application, or expand the evidentiary record. The CCLA's intervention is consented to by the Applicants.

36. The CCLA is ready and able to meet all deadlines imposed by the Court. It does not seek to add to the evidentiary record, as its involvement is limited to legal submissions. There is, therefore, no prejudice in allowing the CCLA to intervene on the Application, as its involvement "will not greatly expand the task before the Court."[44]

B. Proposed Submissions

37. If granted leave to intervene, the CCLA will make three principal submissions:

(a) Beyond merely voting, section 3 of the *Charter* protects the right to a fair democratic process. Part of this right to a fair democratic process is the informational component of the right to vote (*i.e.*, the right of voters to information). The Impugned Provisions undermine the informational component of the right to vote by constraining political discussion for a full calendar year prior to the one month period preceding an election. The CCLA will seek to expand the Court's understanding of the contours of the right to vote from a structural

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43 *Application Decision*, *supra* note 3 at para. 73. BOA, tab 18.

44 *Motion for Leave to Intervene*, *supra* note 9 at para. 11, BOA, tab 17.

perspective and the critical role it plays in maintaining a fair and legitimate democratic process.

(b) The degree of deference accorded by courts to legislatures in the s. 1 justification analysis should be attenuated in situations where the government is in an inherent conflict of interest, particularly when they enact laws that affect the terms and content of a public debate. The legitimacy of Canadian democratic institutions is preserved when the judiciary, as the guardian of the constitution, intervenes to prevent legislators from enacting self-serving laws that insulate themselves from public criticism or accountability to the electorate.

(c) Section 3 is exempt from the notwithstanding clause (section 33) because the notwithstanding clause itself derives its legitimacy from the democratic process. The exemption of section 3 from the application of section 33 is an implicit recognition that legislators have both the interest and capacity to implement electoral rules that favour their re-election at the expense of the fairness and legitimacy of the democratic process. This, in turn, requires the Court to defend the integrity of the democratic process through a broad definition of section 3 and a strict application of section 1.

38. Given the early stage at which the CCLA is filing its motion materials, it may refine these submissions in order to streamline the hearing and avoid any duplication of arguments.

V - ORDER REQUESTED

39. The CCLA seeks an order:

(a) Granting the CCLA leave to intervene in the Application;

(b) Permitting the CCLA to file a factum not to exceed 20 pages;

(c) Permitting the CCLA the right to make oral submissions not to exceed 20 minutes at the hearing of the Application.

(d) Declaring that the CCLA will not seek costs and will not be liable for costs to any other.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28TH DAY OF JULY, 2021

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The Canadian Civil Liberties Association

SCHEDULE "A"

LIST OF AUTHORITIES

Authority

1. *2016596 Ontario Inc. v Ontario (Minister of Natural Resources)* (2003), 124 ACWS (3d) 261 (Ont CA)
2. *Bedford v. Canada (Attorney General)* (2009), 98 OR (3d) 792 (CA)
3. *Canadian Civil Liberties Association v. Ontario (Attorney General)*, 2020 ONSC 4838
4. *Corporation of the Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1988), 64 OR (2d) 577 (ONSC)
5. *Elementary Teachers' Federation of Ontario v Ontario (Minister of Education),* 2018 ONSC 6318 (Div Ct)
6. *Frank v. Canada (Attorney General)*, [2019] 1 S.C.R. 3
7. *Mitchell v. Jackman*, 2017 CanLII 58448 (NL SC)
8. *Opitz v. Wrzesnewskyj*, [2012] 3 S.C.R. 76
9. *Ontario (Attorney General) v Dieleman* (1993), 16 OR (3d) 32 (Gen Div)
10. *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 OR (2d) 164 (CA)
11. *Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] SCR 100
12. *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29
13. *Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to Intervene),* [1989] 2 SCR 335
14. *Tadros v. Peel Regional Police Service*, 2008 ONCA 775
15. *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 SCR 877
16. *Trinity Western University v Law Society of Upper Canada*, 2014 ONSC 5541 (Div Ct)
17. *Working Families Ontario v. Ontario*, 2021 ONSC 3652 (CanLII)
18. *Working Families Ontario v. Ontario*, 2021 ONSC 4076 (CanLII)

Secondary Sources

19. Colin Feasby, "Issue Advocacy and Third Parties in the United Kingdom and Canada" (2003) 48 McGill L.J. 11.

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Federal

Canadian Charter of Rights and Freedoms, *Constitution Act, 1982*, Part I

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein

Ontario

***Rules of Civil Procedure*, R.R.O. 1990, Reg. 194**

RULE 13 INTERVENTION

LEAVE TO INTERVENE AS ADDED PARTY

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or case management master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

HEARING WITHOUT ORAL ARGUMENT

Consent motions, unopposed motions and motions without notice

37.12.1 (1) Where a motion is on consent, unopposed or without notice under subrule 37.07 (2), the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise.

…

Opposed Motions in Writing

(4) The moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case,

(a) the motion shall be made on at least fourteen days notice;

(b) the moving party shall serve with the notice of motion and immediately file, with proof of service in the court office where the motion is to be heard, a motion record, a draft order and a factum entitled factum for a motion in writing, setting out the moving party's argument;

(c) the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise.

(5) Within ten days after being served with the moving party's material, the responding party shall serve and file, with proof of service, in the court office where the motion is to be heard,

(a) a consent to the motion;

(b) a notice that the responding party does not oppose the motion;

(c) a motion record, a notice that the responding party agrees to have the motion heard and determined in writing under this rule and a factum entitled factum for a motion in writing, setting out the party's argument; or

(d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party.

(6) Where the responding party delivers a notice under subrule (5) that the party intends to make oral argument, the moving party may either attend the hearing and make oral argument or not attend and rely on the party's motion record and factum.

***Election Finances Act*, RSO 1990, c E.7**

See online version

***Protecting Elections and Defending Democracy Act, 2021*, SO 2021, c. 31**

1 Section 37.0.1 of the Election Finances Act is repealed and the following substituted:

Considerations re political advertising

37.0.1 In determining whether an advertisement is a political advertisement, the Chief Electoral Officer shall consider, in addition to any other relevant factors,

(a) whether it is reasonable to conclude that the advertising was specifically planned to coincide with the period referred to in section 37.10.1;

(b) whether the formatting or branding of the advertisement is similar to a registered political party's or registered candidate's formatting or branding or election material;

(c) whether the advertising makes reference to the election, election day, voting day, or similar terms;

(d) whether the advertisement makes reference to a registered political party or registered candidate either directly or indirectly;

(e) whether there is a material increase in the normal volume of advertising conducted by the person, organization, or entity;

(f) whether the advertising has historically occurred during the relevant time of the year;

(g) whether the advertising is consistent with previous advertising conducted by the person, organization, or entity;

(h) whether the advertising is within the normal parameters of promotion of a specific program or activity; and

(i) whether the content of the advertisement is similar to the political advertising of a party, constituency association, nomination contestant, candidate or leadership contestant registered under this Act.

2 Subsections 37.10.1 (2), (3) and (3.1) of the Act are repealed and the following substituted:

Same, non-election period

(2) No third party shall spend,

(a) more than $24,000 in any electoral district for the purpose of third party political advertising in that district during the 12-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9 (2) of the Election Act, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar; or

(b) more than $600,000 in total for the purposes of third party political advertising during the 12-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9 (2) of the Election Act, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar.

No combination to exceed limit

(3) No third party shall circumvent, or attempt to circumvent, a limit set out in this section in any manner, including by,

(a) acting in collusion with another third party so that their combined political advertising expenses exceed the applicable limit;

(b) splitting itself into two or more third parties;

(c) colluding with, including sharing information with, a registered party, registered constituency association, registered candidate, registered leadership contestant, or registered nomination contestant or any of their agents or employees for the purpose of circumventing the limit;

(d) sharing a common vendor with one or more third parties that share a common advocacy, cause or goal;

(e) sharing a common set of political contributors or donors with one or more third parties that share a common advocacy, cause or goal;

(f) sharing information with one or more third parties that share a common advocacy, cause or goal; or

(g) using funds obtained from a foreign source prior to the issue of a writ for an election.

Contributions

(3.1) Any contribution from one third party to another third party for the purposes of political advertising shall be deemed as part of the expenses of the contributing third party.

2022 election

(3.2) With respect to the general election to be held in 2022 in accordance with subsection 9 (2) of the Election Act, the relevant period for the purposes of subsection (2) of this section commences on the day the Protecting Elections and Defending Democracy Act, 2021 receives Royal Assent.

3 Section 37.10.2 of the Act is repealed and the following substituted:

Interim reporting requirements

37.10.2 (1) Every third party shall promptly file the following interim reports with the Chief Electoral Officer, in the prescribed form:

1. When it has paid or committed to any person or entity to spend any funds on paid political advertising, it shall report the amount spent or committed, with a separate report being required each time its aggregate spending increases by an amount of at least $1,000.

2. When it has reached the applicable spending limit under section 37.10.1, it shall report that fact.

Posting

(2) The Chief Electoral Officer shall publish every report filed under subsection (1) on the website of the Chief Electoral Officer within two days of receiving it.

Percentage

(3) Based on the interim reports, the Chief Electoral Officer shall determine the amounts spent or committed to be spent by each third party as a percentage of the maximum spending that is permitted for a third party under section 37.10.1, and publish the percentages on the website of the Chief Electoral Officer.

Purpose

(4) The purpose of the percentages determined under subsection (3) is to permit persons or entities that sell advertising to be aware that the third party is at risk of exceeding its spending limit, and to make informed decisions about selling advertising to the third party.

No selling over limit

(5) No person or entity shall sell advertising to a third party when the person should reasonably be aware, based on the reporting under this section, that the sale would cause the third party to exceed a limit imposed by section 37.10.1.

4 The Act is amended by adding the following section:

Application of Charter and Human Rights Code

53.1 (1) Pursuant to subsection 33 (1) of the Canadian Charter of Rights and Freedoms, this Act is declared to operate notwithstanding sections 2 and 7 to 15 of the Canadian Charter of Rights and Freedoms.

Human Rights Code

(2) This Act applies despite the Human Rights Code.

Commencement

5 This Act comes into force on the day it receives Royal Assent.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION ET AL. Applicants	and	**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** Respondent	Court File No: CV-21-00665288

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

FACTUM FOR A MOTION IN WRITING OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

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