IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia Teachers' Federation v. British Columbia,* 2011 BCSC 1372

Date: 20111012
Docket: L021662
Registry: Vancouver

Between:

British Columbia Teachers' Federation and David Chudnosky on his own behalf and on behalf of all Members of the British Columbia Teachers' Federation

Plaintiffs

And

Her Majesty the Queen in Right of the Province of British Columbia

Defendant

Before: The Honourable Madam Justice S. Griffin

Oral Ruling

In Chambers

Counsel for the Plaintiffs:	John D. Rogers, Q.C. Steven Rogers
Counsel for the Defendant:	Karen Horsman
Place and Date of Hearing:	Vancouver, B.C. October 11, 2011
Place and Date of Ruling:	Vancouver, B.C. October 12, 2011

[1] On April 13, 2011, this court rendered Reasons for Judgment in this matter [2011 BCSC 469]. The reasons concluded at paras. 381-385 as follows:

> [381] I conclude:
>
> a) In enacting ss. 8, 9 and 15 of *PEFCA*, and s. 5 of the *Amendment Act*, the government infringed teachers' freedom of association guaranteed by s. 2 (d) of the *Charter*.
>
> b) This infringement was not a reasonable limit demonstrably justified in a free and democratic society under s. 1 of the *Charter*.
>
> [382] I declare ss. 8 and 15 of *PEFCA* and s. 5 of the *Amendment Act* to be unconstitutional and invalid. I suspend the declaration of invalidity for a period of twelve months to allow the government time to address the repercussions of this decision.
>
> [383] Section 9 of *PEFCA* is no longer in force. The teachers' have reserved their right to argue any additional remedies and they may seek a further hearing in this regard.
>
> [384] I have also found that s. 4 of *ESCAA* does not infringe teachers' freedom of association and so is not unconstitutional. I have not found the government to have engaged in other unconstitutional conduct.
>
> [385] If the parties cannot agree on costs, they may also seek a further hearing to address costs.

[2] The acronyms in the conclusion were references to the *Public Education Flexibility and Choice Act*, S.B.C. 2002, c. 3 [*PEFCA*] (Bill 28), the *Education Services Collective Agreement Amendment Act, 2004*, S.B.C. 2004, c. 16 [*Amendment Act*]; and to the *Education Services Collective Agreement Act*, S.B.C. 2002, c. 1 [*ESCAA*].

[3] No appeal was taken.

[4] The British Columbia Teachers' Federation (BCTF) has now applied before me seeking "directions as to the meaning and implication of the Court's Decision in this matter". In oral submissions counsel for the BCTF retreated somewhat from the request that the court describe the implications of the decision, but it is clear to me from the context of this application that this is what the BCTF is seeking.

[5] The BCTF relies on the inherent jurisdiction of this court. This discretionary jurisdiction is invoked by superior courts on very rare occasions to supervise the court's process to avoid a miscarriage of justice. The inherent jurisdiction of the court can provide jurisdiction to re-open a judgment when there has been an obvious accidental error in the court's judgment, or when new evidence comes to light that was not available at the time of trial. In this regard, see *Cheema v. Cheema*, 2001 BCSC 298 at paras. 23-24.

[6] The jurisdiction to reopen a case after judgment has been rendered is extremely limited. This is because of the public interest in the finality of litigation. Without finality, the process and

cost of litigation would be never-ending, as parties would forever be returning to the court to re-argue the case and for tactical advantage. This would put access to justice even more out of reach than it appears to be now.

[7] Yet the BCTF emphasizes that it is not seeking to reopen the matter or have the court reconsider its conclusions. It says that it wants the court to clarify an ambiguity.

[8] There are occasions when inherent jurisdiction is invoked by a court to clarify an ambiguity in the court's ruling, where the "meaning and intention of the court is not expressed in its judgment or order", as was held by Lord Justice Morris in *Thynne v Thynne*, [1955] 3 All E.R. 129 at p. 145.

[9] In *Buckley v British Columbia Teacher's Federation* (1995), 64 B.C.A.C. 147, [1995] B.C.J. No. 2971, the court was presented with two different forms of order by the parties and realized that this was the result of a "latent ambiguity" in the terms of order pronounced by the court. The court considered it appropriate in such a case to vary the judgment to ensure that the terms of the order reflected the court's true intention.

[10] However, here there is no ambiguity in this court's ruling that requires clarification. The result of the case was clear, as was the meaning and intention of the court.

[11] The Province, the defendant, has brought an application seeking to settle the form of order following my April 13, 2011 Reasons for Judgment. The terms of the draft order correctly map the court's conclusions as set out above.

[12] The BCTF takes no issue with the form of order, except it seeks to have added to it whatever "directions" the court makes in response to this application. It has therefore conceded there is no ambiguity in the court's judgment.

[13] The context for this application is that BCTF and the Province are in the midst of collective bargaining. At the same time, the Province has twelve months from the date of this court's April 13, 2011 ruling to deal with the repercussions of the ruling.

[14] The court's conclusion that the declaration of invalidity of the legislation would be suspended for twelve months was consistent with other constitutional case law including *Health Services and Support -- Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27. See also *Fraser v. Ontario (Attorney General)*, 2008 ONCA 760 (rev'd 2011 SCC 20); *Dunmore v Ontario (Attorney General)*, 2001 SCC 94, *McIvor v. Canada (Registrar, Indian and Northern Affairs)*, 2009 BCCA 153; *EGALE Canada Inc. v. Canada (Attorney General)*, 2003 BCCA 251; and *Pratten v British Columbia (Attorney General)*, 2011 BCSC 656.

[15] In the course of the communications between BCTF and the Province dealing with the repercussions of the April 13, 2011 ruling, they each have summarized the Reasons for Judgment in a short sentence or two. Perhaps not surprisingly, they did not agree with each other's summary.

[16] The BCTF has not identified any point of ambiguity in the Reasons for Judgment but the BCTF submits that there must be ambiguity because of the parties' differing summary interpretations in their post-judgment communications.

[17] The fact that the BCTF and the Province have summarized the reasoning of the court somewhat differently does not mean that the court's ruling is ambiguous. The Reasons for Judgment explaining the ruling were 385 paragraphs long. The length of the Reasons for Judgment reflected the complicated nature of the facts and the law.

[18] The true purpose of this application is that BCTF wishes to have the court declare which of the BCTF or the Province is correct in its one or two sentence summary interpretation of the underlying rationale for the court's ruling.

[19] The function of the courts is to settle real and present disputes -- there must be a legal right vested in one party to seek relief from the court. The courts do not exist to give opinions on hypothetical situations. While the courts do have limited jurisdiction to give declarations, this power is not to be exercised where the dispute is merely speculative. In this regard, see the decision of the B.C. Court of Appeal in *Greater Vancouver (Regional District) v. British Columbia*, 2011 BCCA 345 at paras. 50-51; see also the observations of the then Alberta Supreme Court in *Charleston v. MacGregor and Brotherhood of Railroad Trainmen* (1957), 11 D.L.R. (2d) 78, [1957] A.J. No. 73 (Alta. S.C.).

[20] The BCTF's application is unusual. The BCTF has provided me with no precedent with circumstances analogous to the circumstances here.

[21] I do not consider it properly the function of this court to supervise whether or not the BCTF and the Province are presently accurately describing the state of the law in their communications with each other. There is no present actionable dispute that the Court needs to resolve.

[22] The BCTF's application is therefore dismissed.

[23] The terms of the order incorporating the court's judgment can be settled along the lines of the concluding paragraphs of the Reasons for Judgment, as already set out above, which are precise and unambiguous. The draft form of Order submitted by the Province is approved, subject to the changes discussed in court yesterday.