COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *British Columbia Teachers' Federation v. British Columbia Public School Employers' Association,* 2013 BCCA 241

Date: 20130521
Docket: CA039513

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996, c. 244

Between:

British Columbia Teacher's Federation / Cranbrook District Teachers' Association

Appellant (Union)

And

British Columbia Public School Employers' Association / The Board of Education of School District No. 5 (Southeast Kootenay)

Respondent (Employer)

Before: The Honourable Madam Justice Levine
The Honourable Madam Justice Garson
The Honourable Mr. Justice Hinkson

On Appeal from the Labour Relations Board, October 31, 2011 (Freedom of Expression Grievance, [2011] B.C.C.A.A.A. No. 126, Collective Agreement Arbitration, Cranbrook, British Columbia)

Counsel for the Appellant:	J. Arvay, Q.C. R. Trask
Counsel for the Respondent:	J.C. Anderson
Place and Date of Hearing:	Vancouver, British Columbia February 26, 2013
Place and Date of Judgment:	Vancouver, British Columbia May 21, 2013

Written Reasons by:
The Honourable Madam Justice Levine

Concurring Reasons by:
The Honourable Mr. Justice Hinkson (Page 16, Paragraph 55)

Concurring Reasons by:
The Honourable Madam Justice Garson (Page 20, Paragraph 68)

Reasons for Judgment of the Honourable Madam Justice Levine:

Introduction

[1] The question in this case is the extent to which teachers' expression of political views on education issues in public schools is protected freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[2] The political expressions in issue were messages critical of specific government education policies, contained on posters posted on classroom doors and school bulletin boards, and on buttons worn by teachers. Pursuant to a directive from the school district that political posters and information should not be displayed in school hallways, classrooms, or on school grounds, some principals told teachers to stop displaying the posters and wearing the buttons.

[3] An arbitrator was appointed to resolve a grievance filed by the appellant, the British Columbia Teachers Federation, claiming that the directive violated the teachers' *Charter* protected rights to freedom of expression. The respondent, the British Columbia Public School Employers' Association, conceded the directive violated teachers' freedom of expression under s. 2(b) of the *Charter*. The arbitrator found the directive was a reasonable limit on the teachers' rights under s. 1 of the *Charter*. The BCTF appealed.

[4] This Court previously considered this issue in *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2005 BCCA 393, 44 B.C.L.R. (4th) 1 ("*Munroe*"). A majority of the Court found that school board directives advising teachers not to post materials similar to those in issue in this case on school bulletin boards were not a reasonable limit on teachers' freedom of expression.

[5] The BCPSEA seeks to distinguish *Munroe* on its facts. In my opinion, *Munroe* is indistinguishable from this case, and is binding on this Court.

[6] It follows that I would allow the appeal, set aside the order of the arbitrator, and allow the grievance of the BCTF.

Background

[7] In October 2008, the BCTF started a campaign entitled "When Will they Learn". The campaign was started prior to municipal elections, which included the election of school trustees. It focused on BCTF complaints regarding special needs of students being neglected, school closures, and overcrowding of classes. The campaign resumed in January 2009 prior to the provincial election in May 2009. Campaign materials, including posters and buttons, were circulated by the BCTF to teachers.

[8] On April 23, 2009, the director of Instruction/Human Resources in School District No. 5 (Southeast Kootenay) sent an email to all principals in the district advising them that political posters or information should not be displayed in school hallways, classrooms, or on school grounds, but that Union material could be posted on assigned bulletin boards in staff rooms (the "April Email").

[9] In early May 2009, two teachers posted campaign materials in the hall outside their classrooms, which were close to the school entrance. The teachers were instructed by the principal to remove the posters. In another situation, a teacher wearing a campaign button was asked by the principal of a school she was visiting to remove the button. She complied. The same teacher was not asked to remove the button by the principal of another school, who did not understand the April Email to refer to the wearing of buttons.

[10] On May 1, 2009, the Cranbrook and Fernie Teachers' Association sent an email to the director advising that it disagreed with the April Email's direction to principals. It stated that it would file a Step 3 grievance if the District did not rescind

the direction. The director replied in a letter dated May 4, 2009, which reiterated the position in the April Email. The CFTA filed a grievance on May 5, 2009, and the BCTF referred the matter to arbitration. A two-day hearing took place in March 2010 and an award was issued in favour of the BCPSEA in October 2011.

The Arbitrator's Decision

[11] The BCPSEA conceded that the teachers' activity in this case was protected freedom of expression under s. 2(b) of the *Charter*, but claimed it was justified as a reasonable limit prescribed by law under s. 1 of the *Charter*. Thus the argument before the arbitrator focused on the application of the legal tests for justification of a reasonable limit on a *Charter* right, derived from *R. v. Oakes*, [1986] 1 S.C.R. 103 and subsequent jurisprudence.

[12] The arbitrator noted (at 24) that no issue was raised about whether the April Email was "prescribed by law" for the purpose of the application of s. 1, as that issue had been decided in *Munroe*.

[13] The arbitrator noted further that "[t]he point of departure for analyses of restrictions on freedom of expression for teachers" is *Munroe*, and that some of the points made before the arbitrator in that case "are now settled law" (at 32). Thus, political materials related to educational policy are protected freedom of expression (at 33). He quoted from *Munroe*, where Madam Justice Huddart said (at para. 34):

> ... it seems self-evident that discussion of political issues relevant to school administration with parents or posting information about those issues on school bulletin boards fosters political and social decision-making and thereby furthers at least one of the values underlying s. 2(b) ...

[14] He summarized the protection afforded teachers' freedom of expression (at 34):

> Taken together, these authorities stand for a high level of protection for freedom of expression under the *Charter*. Exercise of this right is regarded as a fundamental element of Canadian democracy, and restrictions are possible, but not easily justified. Furthermore, teachers are not deprived of this right by virtue of their position as employees of school boards or the mere

> fact that the expression occurs in their workplaces. Their rights extend to the discussion of educational policy issues in the context of a provincial election.

[15] The arbitrator considered and rejected the BCPSEA's arguments that the campaign material was partisan (at 36), finding that it fell within the teachers' right to advocate educational policies during election periods (at 38). He also rejected the BCPSEA's argument that some aspects of the campaign material were inaccurate, saying that freedom of expression does not depend on a "neutral assessment of the accuracy of opinions expressed" (at 38).

[16] The arbitrator then considered two of the contextual factors identified in *Munroe* that address the degree of deference to be given to the means chosen to implement a policy. The parties agreed that two of these factors, the nature of the harm and the inability to measure it, and the vulnerability of the group, were relevant to this case (at 38).

[17] The arbitrator found there was no evidence of harm to teachers, "apart from the obvious restriction on their form of expression" (at 38). He commented that "it is difficult to predict what evidence of harm might be persuasive in a case such as this one" (at 38-39), and again quoted Huddart J.A. in *Munroe* (at para. 50), where she said she could "not discern any potential harm from the posting of materials on a school bulletin board" (at 39). He noted the BCPSEA's argument that in *Munroe*, the materials were used in parent-teacher meetings, while in this case the means of presenting the messages to parents involved children. He disagreed that children were the objects of the political message, but noted "children were exposed to it" (at 39).

[18] Turning to the second relevant contextual factor, the vulnerability of the group, the arbitrator noted that the "authorities ... do not expound on this point" (at 39-40). He described the goal of the BCPSEA in this case as protection of student and parents, and concluded that "it is the vulnerability of the students that should be given the most weight in this case" (at 41).

[19] Moving on to the *Oakes* analysis, the arbitrator began by dismissing most of the objectives that the BCPSEA submitted were relevant in this case: "maintenance of political neutrality in schools, prohibition of partisan political messages, insulation of students from partisan political messages, maintenance of teacher professionalism, the right of the [BCPSEA] to manage and organize schools" (at 42). Instead, he found that "insulating students from political messages in the classroom" was a pressing and substantial objective (at 44).

[20] In the course of his analysis, the arbitrator distinguished *Munroe* on the basis that in that case, "[t]he Court supported the right of teachers to discuss class size and composition 'in relation to the needs of a particular child by an informed and articulate teacher'" (at 43). He noted that *Munroe* also concerned the posting of posters on bulletin boards "where parents and students might see them" (at 43), but cited, in support of his conclusion that insulating students from political messages was at issue here, other arbitration awards where protecting students from political expression was relevant: see *British Columbia Public School Employers' Assn. v. British Columbia Teachers' Federation (Pamphlet Grievance)*, [2008] B.C.C.A.A.A. No. 51, 172 L.A.C. (4th) 299 (the "*Kinzie*" award), and *British Columbia School Employers Assn. v. British Columbia Teachers' Federation (Freedom of Expression Grievance)*, [2011] B.C.C.A.A.A. No. 25, 206 L.A.C. (4th) 165 (the "*Burke*" award) (at 43-44).

[21] The arbitrator turned to the proportionality elements of the *Oakes* test: that the means chosen are rationally connected to the objective, they impair the freedom "as little as possible", and their effects are proportional to the objective (at 45).

[22] He found that the instructions to the teachers were rationally connected to the objective of insulating students from political messages, and that the teachers' freedom of expression was minimally restricted because "the teachers' approach to introducing political messages was limited and restrained, and the instructions were confined to the materials in question where they appeared in the presence of students" (at 46). He noted that because many parents would be unlikely to see the

messages in issue where they were posted or worn by teachers, the deleterious effects of the restrictions were proportional to the salutary effects of the insulation of the students (at 46).

[23] He concluded (at 46):

> In the circumstances of political discourse within schools, I find that the measures were proportional to the objective of insulating students from political discourse in the classroom and adjacent areas associated with it. The effect on parents, the intended audience, was at most modest. ... [M]any parents ... would not be affected by the restriction in any way.

[24] In the result, he denied the grievance.

Munroe

[25] *Munroe* presented remarkably similar facts and issues as those in this appeal.

[26] *Munroe* concerned materials produced by the BCTF for a political campaign against the provincial government's legislation and policies concerning the scope of teachers' collective bargaining about class size and composition. Several school boards issued directives advising teachers they were not to post materials relevant to the campaign on bulletin boards in areas of schools where students and parents might see them, and they were not to distribute materials to parents either during parent-teacher interviews or otherwise on school property. The school boards also advised teachers that parent-teacher interviews could not be used to discuss class size or collective bargaining issues.

[27] An arbitrator (D.R. Munroe) was appointed by the parties to determine whether the school boards' directives were contrary to s. 2(b) of the *Charter*. He concluded that s. 2(b) was engaged (*British Columbia Public School Employers' Assn. v. British Columbia Teachers' Federation*, [2004] B.C.C.A.A.A. No. 82, 129 L.A.C. (4th) 245 at para. 49):

> Those of the teachers who chose to do so, were intending, as teachers in their work environment, to express themselves on educational issues, either by posting flyers on what the Statement of Case calls teachers' bulletin

> boards (although in areas of the schools where parents and students have access), or by handing out materials during parent-teacher interviews.

[28] Without engaging in a full *Oakes* analysis, the arbitrator found that the school boards' prohibition could not be justified under s. 1 (at para. 54).

[29] This Court upheld the arbitrator's decision that the teachers' rights to freedom of expression under s. 2(b) of the *Charter* were infringed by the school boards' directives, and they were not a reasonable limit under s. 1.

[30] In her consideration of the application of s. 1, Huddart J.A. for the majority first considered whether the school boards' directives were "prescribed by law" as required by the wording of s. 1 of the *Charter*:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[31] She referred to the dissenting reasons of Mr. Justice Le Dain in *R. v. Therens*, [1985] 1 S.C.R. 613 at 645, concurring on this point, who held (at para. 42):

> The requirement that the limit be prescribed by law is chiefly concerned with the distinction between a limit imposed by law and one that is arbitrary. The limit will be prescribed by law within the meaning of s. 1 if it is expressly provided for by statute or regulation, or results by necessary implication from the terms of a statute or regulation or from its operating requirements. The limit may also result from the application of a common law rule.

[32] She applied this distinction between a limit imposed by law and one that is arbitrary in concluding that the school boards' directives were prescribed by law (at paras. 43-44):

> In support of its view that the directives were prescribed by legislative authority, the BCPSEA puts forward various provisions of the *School Act* [R.S.B.C. 1996, c. 412] and the *School Regulation* [B.C. Reg. 265/89]. Under s. 85(2)(a) of the *School Act*, a school board may, *inter alia*, "determine local policy for the effective and efficient operation of schools in the school district", and under s. 85(2)(c) make rules "respecting the ... operation, administration and management of schools operated by the board" and "respecting any

> other matter under the jurisdiction of the board". Generally, "[a] board is responsible for the management of the schools in its school district ..." (*School Act*, s. 74(1)). School boards may also appoint principals to "perform the supervisory, management and other duties required or assigned by the board" (*School Act*, s. 20(1) and *School Regulation*, s. 5(6)(a)).
>
> Although the directives may not fit nicely into the language of this legislation, they are not in the class of arbitrary conduct addressed in the authorities to which the BCTF referred, where government actors acted outside the scope of their legal authority. Given the directives' restricted political expression that was critical of provincial government educational policy and potentially controversial, they could be seen to come within s. 85(2)(a), as a determination of "local policy" for the effective and efficient operation of schools in the school district. However, as I noted earlier, the arbitrator observed at para. 51 the proposed expression by teachers would in no way interfere with the effective and efficient operation of a school, result in the loss of instructional time or other educational disturbance, or impair teachers' performance of their duties. This finding makes justification of the limitations very difficult, but it does not mean they were not prescribed by law.

[33] Madam Justice Huddart then discussed the contextual factors that affect the type of proof a court will require of a public body to justify its measures, and what degree of deference will be accorded to the particular means chosen to implement a legislative purpose (at para. 47). She noted that the BCPSEA "put forward no direct evidence of the effect or potential effect of the BCTF's" campaign (at para. 47).

[34] She considered the potential harm to the public's confidence in the school system from teachers using a parent-teacher interview to hand out political materials, and reasoned that a discussion about class size and composition in relation to the needs of a particular child by an informed and articulate teacher could enhance confidence in the school system (at paras. 49-50). With respect to posting of materials on a school bulletin board, she said (at para. 50): "Like the arbitrator, I cannot discern any potential harm from the posting of materials on a school bulletin board" (at para. 50).

[35] Turning to the remaining portions of the *Oakes* analysis, Huddart J.A. determined that the school boards' objectives in issuing the directives were to maintain public confidence in the public school system and to ensure parent-teacher interviews meet their purpose. She noted that the school boards and teachers have

a duty "to ensure public schools are and are seen to be places open and receptive to a wide spectrum of views, particularly in political discourse" (at para. 59). She concluded that the school boards' objectives were pressing and substantial (at para. 59), and were rationally connected to this objective (at para. 60).

[36] Madam Justice Huddart was not satisfied, however, that the "absolute ban of discussion on school property during school hours minimally impaired teachers' rights" (at para. 68). She considered the prohibition on discussion at parent-teacher interviews of class sizes and composition and concluded, given the public debate over those issues and the absence of any evidence of abuse (at para. 68):

> Few places would be more appropriate for a discussion of the need for resources for public schools than a parent-teacher interview dedicated to one child's education.

[37] She dealt with the prohibition on posting of materials on bulletin boards succinctly (at para. 69):

> Because I am unable to infer any potential harm from the posting of materials on school bulletin boards, I cannot find that limit minimally impairs teachers' rights.

[38] In light of those findings, she did not consider the final proportionality stage of the *Oakes* test. She concluded the school boards' directives were unconstitutional.

[39] Mr. Justice Lowry dissented, holding that there is "simply no place for the use of our public schools as a platform for teachers to advance political agendas" (at para. 72). He concurred with Huddart J.A. on certain key legal matters, including that the school boards were subject to the *Charter*, the directives violated the teachers' s. 2(b) right to freedom of expression, and the directives were "prescribed by law" within the meaning of s. 1 of the *Charter* (at para. 72).

The Appeal

[40] This appeal from the decision of the arbitrator is brought "on a matter or issue of the general law", that is, the application of the *Charter*, under s. 100 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244. The standard of review is correctness.

[41] The obvious issue on appeal is whether *Munroe* is distinguishable from this case. The BCPSEA did not seek a five-judge division to consider whether *Munroe* should be reconsidered. Rather, it argues that the actions taken by the director here are sufficiently different from those considered in *Munroe* that that decision does not apply.

[42] The short answer is that *Munroe* is, in my view, indistinguishable on the facts, and the arbitrator misinterpreted and misapplied the decision in his analysis in this case.

[43] While the reasons for judgment in *Munroe* focus in more detail on the impact of teachers using political materials in parent-teacher interviews, the question of whether the teachers could post those materials on bulletin boards where both parents and students could see them was squarely before the Court. Madam Justice Huddart expressly dealt with that aspect of the case on the basis that as she could not infer any potential harm, it did not minimally impair the teachers' rights (at para. 69).

[44] Despite the similar lack of evidence of any harm or potential harm to students from the possible exposure to political material on bulletin boards or buttons worn by teachers in schools, and the express finding in *Munroe* that a similar prohibition was not a reasonable limit on teachers' rights, the arbitrator in this case inferred from *Munroe* (and other arbitration awards) that the goal of insulating students generally from such messages was a pressing and substantial objective.

[45] This conclusion misconstrued *Munroe* by failing to give effect to the Court's express consideration of that issue, and failed to distinguish the issues in the other

arbitration awards cited as supporting limiting teachers' rights of expression in order to insulate students from political messages.

[46] In *Kinzie*, the arbitrator upheld the rights of teachers to send home with students, in a sealed envelope, BCTF materials opposing the use of standardized assessment tests. He considered the BCPSEA's concern that students should not be involved in the political issues discussed in the material. He decided that this was not a "pressing and substantial objective", noting that *Munroe* had concluded that political expression had a place in schools, and the use of sealed envelopes was a reasonable attempt to address the concern (at paras. 113-115). This decision does not stand for the proposition that insulating students from teachers' political expression in schools is a pressing and substantial objective.

[47] In *Burke*, the school board directed teachers not to wear black armbands in schools to demonstrate their opposition to the standardized assessment tests, and to refrain from discussing their opposition to the tests with students. There was direct evidence that the wearing of armbands and discussion between teachers and students of the teachers' protest against the tests had disrupted the education process and confused elementary school students who were required to write the tests (at para. 142). The arbitrator found, on the facts of that case, that the school board's objective in insulating the students from political messages that impact directly on the educational program was pressing and substantial (at paras. 131, 147).

[48] The fact patterns in these arbitration awards distinguish them from *Munroe*. The facts in this case are not so distinguishable.

[49] The arbitrator also misapplied the tests of minimal impairment and proportionality in finding that since the teachers' actions were restrained and not many parents would have seen the materials in the locations the teachers posted or wore them, the school board's prohibition of those activities was similarly restrained and did not result in deleterious effects on the teachers. He seems not to have

considered that the effect of the school boards' directive was to prohibit the teachers from expressing their political views in any location where students could be exposed to them. He did not consider, in the context of the minimal impairment test, whether there were other, less restrictive, means to limit the teachers' expression, and in considering proportionality, he failed to identify any evidence or particulars of harm to students that could result from seeing the material.

[50] There was no evidence in this case of any actual or potential harm to students from being exposed to the materials about educational issues, nor any facts from which an inference of harm could be drawn. On the contrary, Canadian jurisprudence, including *Munroe*, stands for the principle that open communication and debate about public, political issues is a hallmark of the free and democratic society the *Charter* is designed to protect. Children live in this diverse and multi-cultural society, and exposing them to diverse societal views and opinions is an important part of their educational experience: see, for example, *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, [2012] 1 S.C.R. 235, at paras. 39-40.

[51] Cases such as this are concerned with where limits may be drawn with respect to the exercise by particular groups of their *Charter* protected rights and freedoms. It is likely that most Canadians would agree that when the exercise of a person's rights is shown to have interfered with or harmed others in the exercise of their rights, or where rights are exercised without corresponding responsibility, there may be justification for some limiting actions.

[52] In this case, as the arbitrator noted, the teachers' actions were limited and restrained, and he concluded that not many parents would see the messages. He also noted that "[t]he facts of this case do not permit me to address the issue of 'political electioneering' in the schools" (at 42). It would be a different case if schools became a political battleground, festooned at election time with competing political messages. On those facts, it might be expected there would be direct evidence, or fair inferences, of interference with the educational process and some harm to students' educational experience. That is not this case.

[53] The law supports the exercise by teachers of their right of free expression in schools. There was nothing about this case to exclude it from that principle, as developed and applied in *Munroe*.

[54] For these reasons, I would allow the appeal, set aside the order of the arbitrator, and allow the grievance of the BCTF.

"The Honourable Madam Justice Levine"

Reasons for Judgment of the Honourable Mr. Justice Hinkson:

[55] I have had the opportunity of reading Madam Justice Levine's judgment. I agree with her conclusion that the decision of this Court in *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2005 BCCA 393, 44 B.C.L.R. (4th) 1 [*Munroe*], is indistinguishable from this case, and is binding on this Court. I also agree with her conclusion that the appeal should be allowed, the order of the arbitrator set aside, and the grievance of the BCTF allowed.

[56] While I agree that the s. 2(b) *Charter* rights of the teachers at issue in this case must prevail, I am concerned about the extent to which school children should be exposed to but one side of any societal views and opinions as a part of their educational experience.

[57] In *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, Mr. Justice La Forest described a school at 856 – 857 as:

> ... a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it.

[58] One cannot argue with the proposition that open communication and debate about public, political issues is a hallmark of the free and democratic society that the *Charter* is designed to protect. But at 874 Mr. Justice La Forest also described:

> ... the right of the children in the School Board "to be educated in a school system that is free from bias, prejudice and intolerance", a right that is underscored by s. 5(1) of the [*Human Rights Act*, R.S.N.B. 1973, c. H-11] and entrenched in s. 15 of the *Charter*. [Emphasis added.]

[59] My colleague has already identified that teachers' rights of freedom of expression in schools are not unlimited. As Mr. Justice La Forest observed at p. 870 in *Ross*, all rights under the *Charter* are guaranteed by s. 1, subject to the limitations

there described, and that the competing values of a free and democratic society have to be adequately weighed in the appropriate context.

[60] At a minimum, as Madam Justice Huddart pointed out in her majority reasons in *Munroe*, the professionalism of teachers includes their obligation to ensure that any discussion in which they engage in the school setting concerning the education of children must be a reasoned one.

[61] In *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827, 2004 SCC 33, the Court considered the limitation on s. 2(b) *Charter* rights in the context of the restriction of third party election advertising expenses during an election period. Mr. Justice Bastarache, writing for the majority of the Court, recognized at 863 that those who choose to participate in the electoral process as third parties do so to achieve one or more of three purposes: to influence the outcome of an election by commenting on the merits and faults of a particular candidate or political party; to add a fresh perspective or new dimension to the discourse surrounding one or more issues associated with a candidate or political party; or to add an issue to the political debate and in some cases force candidates and political parties to address it.

[62] At page 872, Bastarache J. explained:

> The question, then, is what promotes an informed voter? For voters to be able to hear all points of view, the information disseminated by third parties, candidates and political parties cannot be unlimited. In the absence of spending limits, it is possible for the affluent or a number of persons or groups pooling their resources and acting in concert to dominate the political discourse. The respondent's factum illustrates that political advertising is a costly endeavour. If a few groups are able to flood the electoral discourse with their message, it is possible, indeed likely, that the voices of some will be drowned out; see *Libman, supra*; *Figueroa, supra*, at para. 49. Where those having access to the most resources monopolize the election discourse, their opponents will be deprived of a reasonable opportunity to speak and be heard. This unequal dissemination of points of view undermines the voter's ability to be adequately informed of all views. In this way, equality in the political discourse is necessary for meaningful participation in the electoral process and ultimately enhances the right to vote. Therefore, contrary to the respondent's submission, s. 3 does not guarantee a right to unlimited information or to unlimited participation.

[63] I see no reason why students should receive less protection from the monopolization of the discourse of a societal issue than adults who are subjected to a flood of discourse on an electoral issue by proponents of one side to that issue. In the case of the students, the monopolization on the issue may deprive them of their right to be educated in a school system that is free from bias.

[64] Where the issue upon which teachers choose to exercise their rights to free speech is a political one, their rights must be balanced against the rights of their students to an education that is free from bias. That brings into play, as it did in *Harper*, the concern that if a group is able to monopolize its message on any issue, competing views will be deprived of a reasonable opportunity to be heard.

[65] As my colleague points out, the arbitrator in this case found that the children were not the object of the teachers' political message. I consider that to be an important, but not necessarily a determinative finding. While exposing children to diverse societal views and opinions is an important part of their educational experience, exposure to only one view of an issue, where there are legitimate competing views could represent a failure to uphold the principles of tolerance and impartiality that the education system must promote and foster.

[66] Nor is it necessary for there to be conclusive scientific proof of harm to students or the education system before the teachers' rights of free speech can be subjected to some limitation. In *Harper* at 874, Bastarache J. discussed the degree of proof required of the government to justify the requirements of s. 1 of the *Charter*:

> The legislature is not required to provide scientific proof based on concrete evidence of the problem it seeks to address in every case. Where the court is faced with inconclusive or competing social science evidence relating the harm to the legislature's measures, the court may rely on a reasoned apprehension of that harm.
>
> This Court has, in the absence of determinative scientific evidence, relied on logic, reason and some social science evidence in the course of the justification analysis in several cases; see *R. v. Butler*, [1992] 1 S.C.R. 452, at p. 503; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 768 and 776; *RJR-MacDonald Inc. v. Canada (Attorney General),* [1995] 3 S.C.R. 199, at para. 137; *Thomson Newspapers*, supra, at paras. 104-7; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2. In *RJR-MacDonald*, the Court held, in the absence of direct scientific evidence showing a causal link between advertising bans and

> a decrease in tobacco consumption/use that as a matter of logic advertising bans and package warnings lead to a reduction in tobacco use; see paras. 155-58. McLachlin J. held, at para. 137, that:
>
> > Discharge of the civil standard does not require scientific demonstration; the balance of probabilities may be established by the application of common sense to what is known, even though what is known may be deficient from a scientific point of view.

[67] As my colleague points out, *Munroe* is a full answer to the present appeal. However, the proportionality aspects of s. 1 of the *Charter* reserve for another case the evidence required to establish and the point at which teachers' rights of freedom of expression in schools must yield to the rights of students to be educated in a school system that is free from bias.

"The Honourable Mr. Justice Hinkson"

Reasons for Judgment of the Honourable Madam Justice Garson:

[68] I concur with both my colleagues. We are bound by the decision of this Court in *Munroe,* which on these facts is not distinguishable. Both my colleagues recognize that there may be some limits to the freedom of teachers to express their political views within a school environment. Having concluded that we are bound by *Munroe*, it will be for another case to explore the contours of those constraints on such expression of political views.

"The Honourable Madam Justice Garson"