Court File No.: 36495

IN THE SUPREME COURT OF CANADA
(ON THE APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

B E T W E E N:

BC FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION

Appellant
(Appellant)

-and-

ATTORNEY GENERAL OF BRITISH COLUMBIA

Respondent
(Respondent)

-and-

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ATTORNEY GENERAL OF ONTARIO,
ATTORNEY GENERAL OF QUEBEC,
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION,
and CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PARTS I AND II: OVERVIEW, POSITION AND FACTS

1. Election finance laws must balance multiple competing interests: public participation and inclusion, equality of voices, accountability and transparency, and promoting a well-informed electorate. There is no one perfect solution that reconciles all of these interests. British Columbia's *Election Act* represents a reasonable balance and is therefore justified under *Charter* s. 1. This is not to say that BC's model is the only acceptable approach, but it is one reasonable way of striking the balance. Nothing more is required by the *Charter*.

2. The Attorney General of Ontario ("Ontario") intervenes in this appeal to make submissions on the following three points:

   i. Registration requirements like British Columbia's are undemanding, content-neutral "time, place and manner" restrictions of a kind that should be upheld under *Charter* s.1[1];

   ii. This Court has held that judicial deference is particularly appropriate in the context of election advertising laws, given the competing interests at stake and the legislature's expertise in balancing them;

   iii. Where, as here, legislation responds to a "reasoned apprehension of harm", recognition of the need to prevent that intangible harm permeates the entire s. 1 analysis. In such cases, governments are not required by s. 1 to prove the harm scientifically or to lead social science evidence where a common sense inference can be drawn using reason and logic.

[1] P.W. Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 2015) (loose-leaf updated 2015, release 1) vol. 5 at 43-20.2, 43-20.3 [Hogg].

A. The impugned BC legislation

3. Section 239(1) of the BC *Election Act* states "an individual or organization who is not registered under this Division must not sponsor election advertising".[2] Thus, the impugned provision requires an individual (or organization) who wishes to sponsor election advertising to register with the Chief Electoral Officer ("CEO"). Registration can be done free of charge at any District Electoral Office or any Service BC Centre.[3] To register, an individual or organization completes a one-page registration form with the CEO in accordance with s. 240 of the *Election Act* and must provide a solemn declaration with the form. Once these requirements are satisfied, the CEO must accept the registration (s. 240(5)). Section 231 of the BC *Election Act*, which is not challenged, states that election advertising must identify the name and contact information of a sponsor. The scope of "election advertising" is defined in s. 228 of the BC *Election Act*. Importantly, it does not include "the transmission by an individual, on a non-commercial basis on the internet, or by telephone or by text messaging, of his or her political views."

B. Ontario's third party election advertising legislation

4. Like BC, Ontario also regulates election advertising with a view to balancing free political expression with the need to ensure fairness, transparency and accountability. Ontario has two statutes regulating election advertising, each of which deals with registration requirements of third party election advertisers in a

[2] *Election Act*, R.S.B.C. 1996, c. 106, Part 11. s. 239(2) lists exemptions to this registration requirement for entities such as political parties and candidates, who are separately required to file election financing reports.

[3] See Cohen J.'s description of the impugned legislative scheme: *B.C. Freedom of Information and Privacy Assn. v. British Columbia (A.G.)*, 2014 BCSC 660 at paras. 9-17, [2014] B.C.J. No. 688 (BCSC) [BC Supreme Court Judgment].

different way. The first, the *Election Finances Act*, applies to Ontario's provincial elections. It requires third parties to apply for registration after incurring $500 in third party election advertising expenses.[4] All political advertisements under the *Election Finances Act* (whether from a registered or unregistered sponsor) must include the name of the person or entity that required the advertisement to appear, as well as the name of any other person or entity sponsoring the advertisement.[5]

5. The second statute is the *Municipal Elections Act, 1996*, which governs municipal elections in Ontario.[6] On April 1, 2018, provisions relating to third party advertising from Bill 181, the *Municipal Elections Modernization Act, 2016*, will take effect. Pursuant to Bill 181, the *Municipal Elections Act, 1996* will include a registration scheme for third party advertising in an election period. Pursuant to the new registration requirements, individuals may not incur expenses for third party advertisements in municipal elections unless they are registered third parties (both when the expenses are incurred and when the advertisement appears).[7] There is no minimum third party advertising expense a person must incur before they are required to register. "Third party advertisement" is defined narrowly in the statute as having the purpose of promoting, supporting or

[4] *Election Finances Act*, R.S.O. 1990, c. E.7, s. 37.5(1). "Election advertising" includes advertising to promote or oppose any registered party or candidate during an election period (ss. 1(1), 37.1). "Third party election advertising expense" includes expenses incurred in relation to the production or acquisition of the means of transmission of a third party election advertisement to the public (s. 37.1). Registered third parties must file a "third party election advertising report" after polling day, which discloses *inter alia* a list of third party advertising expenses (s. 37.12). When a third party incurs more than $5,000 in third party election advertising expenses, it must file an auditor's report (s. 37.13).
[5] *Election Finances Act*, *supra*, s. 22(9).
[6] *Municipal Elections Modernization Act, 2016,* S.O. 2016, c.15; *Municipal Elections Act*, *1996*, S.O. 1996, c. 32.
[7] *Municipal Elections Act, 1996*, *supra*, s. 88.4(1).

opposing a candidate[8] - thus, general "issue advertising" does not require registration. As with provincial elections, a third party campaign advertisement must itself contain the name and contact information for the registered third party.[9]

PART III: ARGUMENT

A. The registration requirement is a minor infringement of freedom of expression

6. At trial, British Columbia argued that the impugned law was a trivial and insubstantial burden on freedom of expression, and consequently that s. 2(b) of the *Charter* was not infringed. The trial judge rejected this argument, accepting the following statement from the Appellant's BC Supreme Court factum:

> Under s. 239, if an individual wants to express themselves about a matter of importance to them politically in a way that would constitute "election advertising", they cannot do so until they register. The moment they have the impulse of expression until the processing and approval of their application for registration, their freedom is curtailed.[10]

7. The trial judge concluded as follows:

> It is plain that the requirement to register under s. 239 would have the effect of restricting spontaneous or unplanned election advertising, which, like other forms of political expression, enriches political discourse. In limiting participation in this way, s. 239 has the effect of infringing the value underlying s. 2(b) of the *Charter*.[11]

8. In this Court (and at the Court of Appeal), the Attorney General of British Columbia concedes that the registration requirement infringes s. 2(b) in a manner that is not trivial or insubstantial. Notwithstanding this concession, this Court must consider the real nature and impact of the impugned law on freedom of

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[8] *Municipal Elections Act, 1996*, *supra*, s. 1.
[9] *Municipal Elections Act, 1996*, *supra*, s. 88.5(1).
[10] BC Supreme Court Judgment, *supra* at para. 118.
[11] BC Supreme Court Judgment, *supra* at para. 121.

expression in order to appropriately complete the s. 1 analysis. That analysis must take into account the context of the B.C. *Election Act* as a whole, including the limited extent of the burden on expression imposed by the registration requirement and the fact that some forms of communication do not require registration.

9. Ontario submits that the challenged registration requirement in s. 239 of the BC *Election Act* is a minor infringement of s. 2(b) of the *Charter*. The registration requirement is easy to comply with, does not preclude anyone from endorsing or supporting their candidate of choice, and ensures that the public understands the source of any endorsement, thereby promoting transparency, accountability and a better informed electorate.

10. Moreover, read in conjunction with s. 228, any infringement of expression caused by s. 239 is properly classified as a "time, place and manner restriction." While registration is required prior to using some media of expression, registration does not impact on the content of any expression; nor does it favour any particular speaker or viewpoint. It is a truly neutral requirement applicable to all third party election advertisers who express themselves using certain modes of communication, whatever their message. As noted by Professor Hogg, "the least severe form of restriction on expression is the regulation of the time, manner or place of expression"[12] because such restrictions do not bias the marketplace of ideas. As recognized by Professor Hogg, while "time, place and manner" restrictions may limit expression and therefore infringe s. 2(b), "a court would

[12] Hogg, *supra* at 43-20.2.

likely uphold the laws under s. 1" because they do not regulate the content of expression.[13] The same conclusion applies to the challenged law here.

11. As previously stated, not all modes of advertising will trigger the registration requirement under the BC *Election Act*: pursuant to s. 228, individuals may transmit their personal political views on the internet on a non-commercial basis without falling within the definition of "election advertising". The internet is a powerful and accessible tool for participating in public debate. For example, an individual may send a non-commercial email containing his personal political views to thousands of contacts or decide to post a comment to an article or editorial on the website of the *Globe and Mail* or *National Post*.[14] In the words of this Court, the "capacity of the Internet to disseminate 'works of the… intellect' is one of the great innovations of the information age."[15]

12. When read in conjunction with s. 228, it is clear that the effect of s. 239 on expression is measured and leaves room for meaningful political engagement without registration. Under the impugned legislation, individuals are free to express their personal election views through non-commercial use of the internet (or telephone)[16] without having to register with the CEO. The concerns

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[13] Hogg, *supra* at 43-20.3.
[14] Appellants' Record, Vol. II at 71.
[15] *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45 at para. 40, [2004] 2 S.C.R. 427. See also Frank Iacobucci, "Recent Developments Concerning Freedom of Speech and Privacy in the Context of Global Communications Technology" (1999) 48 U.N.B.L.J. 189 at 190.
[16] In *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 at 936-937, a majority of this Court found "that the telephone provides an inexpensive way of communicating with large numbers of people" and that it "is a medium which allows numerous organizations to present information and views to a sizable proportion of the public, whether through active calling or the use of recorded messages." The majority concluded by stating the telephone was "the medium best suited to relatively impoverished organizations seeking to spread new and perhaps valuable ideas."

expressed about s. 239 by the trial judge regarding spontaneous speech, and by Saunders JA in dissent regarding those who are unable or unwilling to register, are mitigated by the extent to which individuals may participate in public political discourse without triggering the registration requirement. In any event, the requirement in s. 239 to register prior to sponsoring "election advertising", as this term is defined in s. 228, is not an onerous one.

B. Particular deference applies in the review of election legislation that regulates expression

13. This Court's jurisprudence demonstrates that "courts ought to take a natural attitude of deference" to legislative choice when reviewing election legislation that regulates expression.[17]

14. This deference is appropriate in light of the legislature's relative expertise on the electoral process. Elected politicians are in close and frequent contact with voters, particularly during an election. As a result, they understand how to promote transparency, accountability and fairness in elections in order to bolster public confidence in the democratic process, and have expertise in how competing principles should be balanced to achieve this goal. This superior expertise justifies the enhanced deference owed in election law cases.

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[17] *R. v. Bryan*, 2007 SCC 12 at para. 9, [2007] 1 S.C.R. 527 per Bastarache J. [*Bryan*]. This form of deference is in addition to any deference that courts must apply when considering the nature and sufficiency of evidence led by the government to justify an infringement of a *Charter* right (See *Bryan* at para. 10). The deference accorded in s. 2(b) election cases is diametrically opposed from the accepted approach in s. 3 *Charter* cases. In *Figueroa v. Canada (A.G.)*, 2003 SCC 37 at para. 60, [2003] 1 SCR 912 [*Figueroa*], this Court confirmed that limits on s. 3 "require not deference, but careful examination". As observed in *Sauvé v. Canada*, 2002 SCC 68 at para. 9, [2002] 3 SCR 519, this is because, "s. 3 is one of the *Charter* rights that cannot be overridden by the invocation of s. 33 of the *Charter*. This highlights the extent to which s. 3 is fundamental to our system of democracy and indicates that great care must be exercised in determining whether or not the government has justified a violation of s. 3."

15. The Court has highlighted the need for deference in reviewing electoral law on several occasions. In its analysis of referendum spending provisions in *Libman*, this Court explained:

> in the social, economic and political spheres, where the legislature must reconcile competing interests in choosing one policy among several that might be acceptable, the courts must accord great deference to the legislature's choice because it is in the best position to make such a choice.[18]

16. While laws regulating election and referendum spending may infringe freedom of expression, they enhance political equality: "the legislature must be accorded a certain deference to enable it to arbitrate between the democratic values of freedom of expression and referendum fairness."[19]

17. More recently, in *Harper*, a majority of this Court confirmed the need for "a deferential approach" to reviewing third party advertising expense limits in light of the extent to which such limits reflect a "political choice" and the complexity of balancing the rights and privileges of all the participants in the democratic process:

> The difficulties of striking this balance are evident. Given the right of Parliament to choose Canada's electoral model and the nuances inherent in implementing this model, the Court must approach the justification analysis with deference…. In the end, the electoral system, which regulates many aspects of an election, including its duration and the control and reimbursement of expenses, reflects a political choice, the details of which are better left to Parliament.[20]

18. In *Bryan*, Justice Bastarache reaffirmed that "courts ought to take a natural attitude of deference toward Parliament when dealing with election laws".[21] In the same case, Justice Fish agreed that it is of particular importance to preserve the

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[18] *Libman v. Quebec,* [1997] 3 S.C.R. 569 at para. 59 [*Libman*].
[19] *Libman, supra* at para. 61.
[20] *Harper v. Canada (A.G.)*, 2004 SCC 33 at para. 87; see also para.111, [2004] 1 SCR 827 [*Harper*].
[21] *Bryan*, *supra* at para. 9.

division between the legislative and judicial roles when reviewing election legislation:

> In addressing this issue, I find it important to bear in mind from the outset that we are dealing here with one element of a comprehensive electoral system that temporarily restricts various forms of expression, including exit polls and the ban on election day advertising upheld unanimously by the Court only recently in *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827, 2004 SCC 33. In this context, we must be particularly careful not to usurp Parliament's role in determining the rules of the electoral game most appropriate for Canada as a whole. And we must avoid any temptation driven by mere preference, even for objective reasons carefully explained, to tamper with those rules unless they run afoul of Canada's constitutional requirements.
>
> For electoral arrangements of this kind, when Parliament prefers, the courts defer – except where the Constitution otherwise dictates. Judicial deference, however, should not be mistaken for diminished constitutional vigilance, still less for judicial approval or entrenchment. Our role is simply to decide whether Parliament's impugned preference passes constitutional muster. In finding that it does here, I take care to add that Parliament can of course change its mind. Within constitutional bounds, policy preferences of this sort remain the prerogative of Parliament, not of the courts.[22]

19. As observed by Justice Fish, exercising deference does not mean that the Court will not conduct a constitutional analysis.[23] Deference simply requires that courts "determine whether the means chosen by the legislature to attain this highly laudable objective are reasonable, while according it a considerable degree of deference since the latter is in the best position to make such choices."[24] Judicial deference also recognizes the reality that there is no one constitutionally-correct answer to how to reconcile the competing interests at stake.

20. This is not a case like *Figueroa*, where the impugned law drew distinctions among political groups and gave preferences to mainstream parties that were

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[22] *Bryan, supra* at paras. 58-59 per Fish J.
[23] In *Libman*, *supra* despite the Court's commitment to deference, it concluded that the impugned provision was unconstitutional. The provision at issue in *Libman* was not a registration requirement for third party advertisers. It was what the Court called "close to being a total ban" on referendum spending for individuals and groups who were not members of or affiliated with a national committee (see para. 75).
[24] *Libman, supra* at para. 62.

denied to smaller parties.[25] Here, the impugned law affects all third-party advertisers equally, whether they support incumbents or challengers, mainstream parties or emergent ones. There is no evidence and no reason to believe that the registration requirement distorts the marketplace of ideas or has any disparate impact on any group of participants in the democratic process. In such circumstances, judicial deference towards neutral election rules of general application is appropriate.

21. This attitude of deference applies throughout the constitutional analysis, including at the stage of minimal impairment, where different legislatures must be afforded the ability to come to their own conclusions about how best to promote transparency, openness, public accountability and an informed electorate.

22. The *Charter* does not preclude British Columbia from being able to choose a comprehensive approach to the registration requirement for sponsorship of third party election advertising. Governments must have flexibility when designing electoral regimes. As set out earlier, Ontario has taken two different approaches to the registration requirement. For provincial elections, the *Election Finances Act* only requires third parties to register once they have incurred $500 in third party election advertising expenses.[26] In contrast, when the amendments to Ontario's *Municipal Elections Act, 1996* take effect on April 1, 2018, third parties will be required to register before incurring any expenses for third party advertising in a

[25] *Figueroa, supra.*
[26] *Election Finances Act*, *supra*, s. 37.5(1).

municipal election during the restricted period.[27] Each of these registration requirements, like that in the British Columbia statute, is one small part of a detailed scheme of election regulation. Government must be given space for legislative decision-making in this complex policy area.

C. "Reasoned apprehension of harm" is not limited to the initial stages of the *Oakes* test and need not be accompanied by social science evidence

23. As the trial judge correctly found, the impugned law's justification is grounded in a reasoned apprehension of harm.[28] The trial judge held that the purpose of the registration requirement was to "increase transparency, openness, and public accountability in the electoral process, and to promote an informed electorate," and that the Legislature had reasonably concluded that the absence of a registration requirement would compromise these goals. It was open to the trial judge to make this finding on the record before him. That finding should not be disturbed on appeal, despite the absence of social science evidence proving that the registration requirement prevents electoral unfairness.

24. The "harm" in the reasoned apprehension of harm standard is the mischief that a law is intended to prevent. In cases where the law is aimed at preventing a social harm that is not readily amenable of empirical proof, the Legislature may rely on a reasoned apprehension of that harm. In *Whatcott,* this Court held that the reasonable apprehension of harm standard

> recognizes that a precise causal link for certain societal harms ought not to be required. A court is entitled to use common sense and experience in recognizing

[27] *Municipal Elections Act*, *supra*, s. 88.4(1).
[28] BC Supreme Court Judgment, *supra* at para. 129; Appellants' Record Vol. I at 38.

> that certain activities, hate speech among them, inflict societal harms.[29]

25. Election laws are a paradigmatic example of laws to which the reasoned apprehension of harm standard ought to apply. Harms related to electoral unfairness and loss of voter confidence are not readily amenable to empirical proof, and government is entitled to rely on a reasonable apprehension of such harms in devising measures to prevent these intangible harms. As the Court noted in *Harper*, another election case:

> Surely, Parliament does not have to wait for the feared harm to occur before it can enact measures to prevent the possibility of the harm occurring or to remedy the harm, should it occur. As noted earlier, this Court has concluded on several occasions that a reasoned apprehension of harm is sufficient.[30]

26. Contrary to the Appellant's contention, the reasoned apprehension of harm is not restricted only to the pressing and substantial objective or rational connection steps of the justification test. The reasoned apprehension of harm is the Legislature's reason for legislating, and should therefore be taken into account at every step of the *Oakes* analysis.

27. An appreciation of the reasoned apprehension of harm is required in order to assess whether there are less-impairing alternatives that could prevent the harm equally well. The question at this step is "whether the limit on the right is reasonably tailored to the pressing and substantial goal…Less drastic means which do not actually achieve the government's objective are not considered at

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[29] *Whatcott v. Saskatchewan Human Rights Tribunal*, 2013 SCC 11 at para. 132, [2013] 1 S.C.R. 467 [*Whatcott*]. See also *Harper, supra* at para. 77, noting that 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."

[30] *Harper, supra* at para. 98.

this stage."[31] Similarly, an appreciation of the reasoned apprehension of harm informs the analysis of whether the law's salutary effect in preventing the harm outweighs its deleterious impacts. Each part of the justification test refers back to the legislative objective, which in this case is to prevent the electoral harms identified.

28. This Court's prior decisions confirm that the government's reasoned apprehension of harm can be considered at the minimal impairment and proportionality steps, and not simply at the pressing and substantial objective and rational connection steps. In *Whatcott*, this Court accepted that a law aimed at restricting hate speech was minimally impairing, even though it did not require proof that the speech caused harm, because a reasoned apprehension of harm was sufficient:

> As was clear from *Taylor*, and reaffirmed through the evidence submitted by interveners in this appeal, the discriminatory effects of hate speech are part of the everyday knowledge and experience of Canadians. I am of the opinion that the Saskatchewan legislature is entitled to a reasonable apprehension of societal harm as a result of hate speech.[32]

29. Similarly, in *Harper*, the majority upheld the challenged spending limits as minimally impairing, even though it noted that "[c]ertainly, one can conceive of less impairing limits,"[33] and rejected the dissenting view that the law could not be evaluated for minimal impairment in the absence of a demonstration of the harm.[34]

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[31] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at paras. 53-54, [2009] 2 S.C.R. 567.
[32] *Whatcott, supra* at para. 135.
[33] *Harper, supra* at para. 118.
[34] *Harper*, *supra* paras. 79 and 111 per Bastarache J. rejecting the view of McLachlin C.J. and Major J. at para. 33.

30. Contrary to the Appellant's argument at para. 58 of their factum, a reasoned apprehension of harm is not available only where a court is presented with "competing" or "inconclusive" social science evidence. A reasoned apprehension of harm may be grounded in reason, logic and common sense:

> 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.[35]

31. The government has the onus to demonstrate that a *Charter* infringement is justified, but no one method of demonstration is prescribed by s. 1. Different methods of demonstrating justification will be appropriate and sufficient in different circumstances. Where, as here, it is apparent to reason and common sense that a measure such as registration promotes transparency, openness and accountability in election advertising, no further social science evidence is needed to establish the link.

32. This view is consistent with the prior jurisprudence. In *Oakes* itself, Chief Justice Dickson held that "there may be cases where certain elements of the s. 1 analysis are obvious or self-evident."[36] In those cases, it would be mere formalism to insist that the government cannot meet its burden under s. 1 unless it has led social science evidence.

33. Similarly, in *RJR-MacDonald*, Justice McLachlin (as she then was) found that the government had met its onus of demonstrating a rational connection between advertising bans and a reduction in smoking, even where the evidence relied on

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[35] *RJR-MacDonald v. Canada (A.G.),* [1995] 3 S.C.R. 199 at para. 137.
[36] *R v. Oakes*, [1986] 1 S.C.R. 103 at 138 [*Oakes*].

by the government was "for all intents and purposes devoid of any probative value." She commented that when legislation is aimed

> at changing human behaviour, as in the case of the *Tobacco Products Control Act*, the causal relationship may not be scientifically measurable. In such cases, this Court has been prepared to find a causal connection between the infringement and benefit sought on the basis of reason or logic, without insisting on direct proof of a relationship between the infringing measure and the legislative objective.[37]

34. Some matters may not be readily amenable of empirical proof or may be demonstrable as a matter of common sense. Where either is the case, there is no reason to impose a blanket requirement that the government must lead evidence in order to meet its onus under s. 1. In this case, as the trial judge held, the link between the registration requirement and the objectives of promoting electoral fairness and transparency is evident. No social evidence was necessary to demonstrate it.

[37] *RJR-MacDonald, supra* at para. 154.

PARTS IV AND V: COSTS AND REQUEST FOR ORAL ARGUMENT

35. Ontario does not seek costs and asks that no costs be awarded against it. Ontario requests permission to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 27, 2016

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Daniel Guttman

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Emily Bala

Of Counsel for the Attorney General of Ontario

PART VI: TABLE OF AUTHORITIES

PART VII: LEGISLATION AT ISSUE

Election Act, R.S.B.C. 1996, c. 106, Part 11, ss. 228, 231, 239, 240

ELECTION ACT
[RSBC 1996] CHAPTER 106
Part 11 — Election Communications

Election advertising

228 For the purposes of this Act:

"contribution" means a contribution of money provided to a sponsor of election advertising, whether given before or after the individual or organization acts as a sponsor;

"election advertising" means the transmission to the public by any means, during the campaign period, of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated, but does not include

(a) the publication without charge of news, an editorial, an interview, a column, a letter, a debate, a speech or a commentary in a bona fide periodical publication or a radio or television program,

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election,

(c) the transmission of a document directly by a person or a group to their members, employees or shareholders, or

(d) the transmission by an individual, on a non-commercial basis on the internet, or by telephone or text messaging, of his or her personal political views;

"value of election advertising" means

(a) the price paid for preparing and conducting the election advertising, or

(b) the market value of preparing and conducting the election advertising, if no price is paid or if the price paid is lower than the market value.

Election advertising must identify sponsor

231 (1) Subject to subsection (2), an individual or organization must not sponsor, or publish, broadcast or transmit to the public, any election advertising unless the advertising

(a) identifies the name of the sponsor or, in the case of a candidate, the name of the candidate's financial agent or the financial agent of the registered political party represented by the candidate,

(b) if applicable, indicates that the sponsor is a registered sponsor under this Act,

(c) indicates that it was authorized by the identified sponsor or financial agent, and

(d) gives a telephone number or mailing address at which the sponsor or financial agent may be contacted regarding the advertising.

(2) Subsection (1) does not apply to any class of election advertising exempted under section 283.

(3) The chief electoral officer, or a person acting on the direction of the chief electoral officer, may

(a) remove and destroy, without notice to any person, or

(b) require a person to remove or discontinue, and destroy,

any election advertising that does not meet the requirements of subsection (1) and is not exempted under subsection (2).

Election advertising sponsors must be registered

239 (1) Subject to subsection (2), an individual or organization who is not registered under this Division must not sponsor election advertising.

(2) A candidate, registered political party or registered constituency association is not required to be registered as a sponsor if the individual or organization is required to file an election financing report by which the election advertising is disclosed as an election expense.

(3) An individual or organization who is registered or required to be registered as a sponsor must be independent of registered political parties, registered constituency organizations, candidates, agents of candidates and financial agents, and must not sponsor election advertising on behalf of or together with any of these.

Registration with chief electoral officer

240 (1) An individual or organization who wishes to become a registered sponsor must file an application in accordance with this section with the chief electoral officer.

(2) An application must include the following:

(a) the full name of the applicant and, in the case of an applicant organization that has a different usual name, this usual name;

(b) the full address of the applicant;

(c) in the case of an applicant organization, the names of the principal officers of the organization or, if there are no principal officers, of the principal members of the organization;

(d) an address at which notices and communications under this Act and other communications will be accepted as served on or otherwise delivered to the individual or organization;

(e) a telephone number at which the applicant can be contacted;

(f) any other information required by regulation to be included.

(3) An application must

(a) be signed, as applicable, by the individual applicant or, in the case of an applicant organization, by 2 principal officers of the organization or, if there are no principal officers, by 2 principal members of the organization, and

(b) be accompanied by a solemn declaration of an individual who signed the application under paragraph (a) that the applicant

(i) is not prohibited from being registered by section 247, and

(ii) does not intend to sponsor election advertising for any purpose related to circumventing the provisions of this Act limiting the value of election expenses that may be incurred by a candidate or registered political party.

(4) The chief electoral officer may require applications to be in a specified form.

(5) As soon as practicable after receiving an application, if satisfied that the requirements of this section are met by an applicant, the chief electoral officer must register the applicant as a registered sponsor in the register maintained by the chief electoral officer for this purpose.

(6) If there is any change in the information referred to in subsection (2) for a registered sponsor, the sponsor must file with the chief electoral officer written notice of the change within 30 days after it occurs.

(7) A notice or other communication that is required or authorized under this Act to be given to a sponsor is deemed to have been given if it is delivered to the applicable address filed under this section with the chief electoral officer.