

March 5, 2020

BY EMAIL

Roger Bilodeau, Q.C., Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

RE: Mike Ward v. Commission des droits de la personne et des droits de la jeunesse,
et al.
Reply to Response to Application for Leave to Appeal
SCC File No: 39041

In answer to Respondent's submission, Appellant states:

1. Respondent clearly does not apply Canada v. Vavilov, [2019] SCC 65 correctly;
2. The statutory procedure was an "appeal" to the Court of Appeal and a lower level of deference is postulated in Vavilov, supra in such cases;
3. Further, the question involves the boundary between the jurisdiction of the Tribunal des droits de la Personne ("discrimination") and the common law courts ("libel") and in such matters the standard used is correctness;
4. Respondent insists the issues are mixed questions of fact and law when in reality the case rests on fundamental questions of law; par. 70 of the dissent of Savard J.A. illustrates this eloquently;
5. It is not because there is a factual context to the litigation that the issue becomes "mixed";
6. There is a factual context to every debate, which is why the Courts normally refuse Charter cases on a mere formulation of the legal question but require the factual context; nevertheless, the debate remains rooted in law;
7. The questions raised by this appeal – the limits of what human rights tribunals can do, the application of freedom of expression and artistic freedom are questions of law; the factual context is important in showing their importance but it does not change the nature of the debate;

8. Therefore, the standard of correctness applies (in any event the majority decision is also unreasonable);
9. Respondent's call for a "large and generous" view of equality rights ignores the equally important imperative of a large and generous application of freedom of expression and artistic freedom; reconciling the two is an important question of law;
10. Madam Justice Savard's analysis both of the notion of discrimination and of freedom of expression illustrates the error made by the majority;
11. Respondent's argument that "there is no error" ignored the dissent, and ignores the important debate that this case has occasioned, both before the Courts and in society;
12. The very paragraph of the majority judgment cited textually by Respondent at the end of its submission, affirms that freedom of expression has become more curtailed in recent times; that is both a controversial and, it is submitted, an erroneous view of recent legal developments;
13. Certainly, a hearing before the Supreme Court would appear appropriate before we accept such an affirmation as correct;

CONCLUSION:

14. Applicant asks that leave to appeal be awarded;

Yours truly,



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