

Case Law Update: Toronto Star Newspapers v. Canada

June 1, 2010

2010 SCC 21, released 10 June 2010

Constitutional Law Mandatory Publication Bans at Bail Hearings do not Infringe the Freedom of Expression Guarantee under the Charter

This appeal, which arose in the context of two high-profile cases in Alberta and Ontario, involved a consideration of the constitutionality of s. 517 of the *Criminal Code*. The appellant media organizations argued that the provision is an unjustifiable violation of the Charter's freedom of expression guarantee because it provides for a mandatory publication ban of the evidence and information produced at a bail hearing if requested by the accused.

In an 8-1 decision, the Supreme Court of Canada upheld the constitutionality of s. 517 under the *Oakes* test. Parliament's pressing and substantial objective was to both ensure expeditious bail hearings and to safeguard an accused's right to a fair trial. The s. 517 mandatory publication ban is rationally connected to this objective because it prevents the dissemination of evidence which, at that point, was untested for relevance or admissibility.

The mandatory publication ban also meets the requirements of the minimal impairment aspect of the *Oakes* test.

The ban is limited to a preliminary stage of the criminal justice process and is not absolute. The information subject to the mandatory publication ban is untested, often one-sided and largely irrelevant to the search for truth. Although the ban may make journalists' work more difficult, it does not prevent them from conveying and commenting on basic and relevant information concerning the case at issue.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035