

CASE LAW UPDATE

Mark Edelstein *

R. v. Caron

2011 SCC 5 (Released February 4, 2011)

Constitutional Law – Interim Costs Awards – Inherent Jurisdiction of the Courts – Inferior Courts

Here the Supreme Court held that Superior Courts can make interim costs awards to fund public interest litigation in the inferior provincial courts.

In the underlying litigation, the Respondent Caron had challenged the constitutional validity of Alberta Provincial Court proceedings on the basis that the court documents were solely in English. Caron pleaded that the provisions of the Alberta Languages Act, which purported to abrogate French Language rights in order to permit such unilingual documents, was unconstitutional.

At issue in the Supreme Court of Canada was the funding of Caron's litigation. The Provincial Court had made an interim costs order – an "*Okanagan* order", so named after the case which enables them – in favour of Caron. The Alberta Court of Queen's Bench ("**ACQB**") set aside this order on the ground that the Provincial Court lacked jurisdiction to make it. However, the ACQB then made its own *Okanagan* order to fund Mr. Caron's litigation in the Provincial Court. Ultimately, the Supreme Court of Canada dismissed the Crown's appeal of this order.

The Supreme Court emphasized that the language rights issue was of fundamental importance and touched on the validity of the entirety of Alberta's legal system. The court drew an explicit parallel to the interim award endorsed by the court in *Okanagan*. Further, it emphasized that the basis for such orders is a Superior Court's inherent jurisdiction, which includes the ability to "render assistance to inferior courts." The court also held that statutory costs provisions do not oust a Superior Court's inherent jurisdiction to make these awards. On the present facts, the *Okanagan* criteria were met and the ACQB was within its jurisdiction to make the interim awards to Caron.

Justice Abella's concurring opinion emphasized that the Supreme Court's decision does not unduly extend a Superior Court's ability to intervene in the workings of statutory tribunals. She noted that the decision did not conclusively address whether an inferior court can make interim

costs awards. Further, the inherent jurisdiction of a Superior Court must be balanced with the “implied legislative mandate of a statutory court or tribunal to control its own process”.

The decision provides a robust assessment of inherent jurisdiction, while Justice Abella’s concurrence is perhaps a springboard towards more expansive readings of the inherent jurisdiction of statutory tribunals.

*Mark Edelstein is an Associate at WeirFoulds LLP (www.weirfoulds.com).