

Case Law Update: May v CBC/Radio Canada et al

May 1, 2011

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2011 FCA 130 (Released April 8, 2011)

Judicial Review – Canadian Radio-television and Telecommunications Commission (CRTC) – *Canadian Charter of Rights and Freedoms* – Voting Rights

Pursuant to the *Canada Elections Act*, the CRTC is required to issue a set of guidelines with respect to the conduct of broadcasters during a general election within four days of the election writ being dropped. The CRTC issued such a bulletin for the May 2011 election (the “**Bulletin**”), which referred to the CRTC’s 1995 *Guidelines* (the “**Guidelines**”). The Guidelines provided that not all party leaders need be included in the leaders’ debates, as long as equitable coverage of all parties is provided during the election campaign.

The Applicant is the leader of the Green Party, and brought an application for a *mandamus* order requiring the CBC and its broadcasting partners to allow her to participate in the leaders’ debates. She also sought an expedited hearing of the application. The Applicant argued that the Bulletin violated her right of effective participation in a fair electoral process under section 3 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”).

The court dismissed the application for four reasons. First, the court held that the application could have been brought earlier than it was, and thus there was no need for an urgent hearing. Even though the Bulletin was issued after the election was called, the Bulletin referred to the Guidelines, which contained the same impugned rule. The Applicant could have challenged the Guidelines at any time.

Second, the court held that the Respondents, the Applicant and the public interest would be significantly prejudiced if the application were expedited. The application involved extensive expert evidence and *Charter* argumentation. The court doubted that an adequate evidentiary and argumentative record could be produced in the time before the leaders’ debates were to take place, and found that it would not be in the public interest to have such a speedy determination made on such important issues.

Third, the court found that the application contained a formal defect in that it failed to name the Attorney General of Canada as a Respondent.

Finally, although on an interlocutory motion the court generally does not consider an application’s merits, in this case, doing so was appropriate because the result of the interlocutory motion would have amounted to a final determination of the case. The court expressed “significant doubts concerning the applicant’s ability to obtain the relief sought”. Among other things, the court noted that it is unable to compel the exercise of a “fettered discretion” in a particular way.

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