Case Summary
Edmonton Journal v. Alberta (Attorney General)
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[1989] 2 S.C.R 1326
decided: December 21, 1989

FACTS

The Edmonton Journal (Journal) sought a declaration that the Alberta Judicature Act violated the Canadian Charter of Rights and Freedoms. Specifically, the Journal argued that s. 30 of the Act infringed upon freedom of expression under s. 2(b) and legal equality under s. 15.

Section 30(1) of the Act prohibited the publication of any details regarding matrimonial court proceedings except (1) the names, addresses and occupations of the parties and witnesses, (2) the charges, defences, counter-charges and legal submissions, and (3) the summing of the judge, the findings of the jury and the decision of the court. Section 30(2) prohibited the publication before trial of any details regarding civil proceedings except (1) the names of the parties and (2) the general nature of the claim and the defence. Section 30(3) allowed the publication of otherwise prohibited content, but only when ordered by the court.

LOWER COURTS

Both the trial judge and the Court of Appeal refused the declaration. Both courts concluded that s. 30 did not violate s. 15. Furthermore, the courts concluded that while s. 30 did violate s. 2(b), the violation was justifiable under s. 1 of the Charter. The Journal appealed the Court of Appeal’s decision to the Supreme Court.

ISSUES

The Attorney General of Alberta conceded that s. 30 of the Act violated s. 2(b) of the Charter. As such, the Supreme Court considered only one issue:

1. Whether the violation of s. 2(b) of the Charter was justifiable under s. 1.

DECISION:
The Supreme Court ruled that the Journal’s appeal should be allowed (La Forest, L□Heureux-Dube and Sopinka dissenting in part.) While a majority existed in the result, none existed in regards to reasons.

Cory (writing for himself, Dickson and Lamer) concluded the following:

1. The violation of s. 2(b) was not justifiable under s. 1 of the Charter.

Wilson agreed with Cory’s results but for different reasons.

La Forest (writing for himself, L□Heureux-Dube and Sopinka) dissented in part. He concluded the following:

1. Section 30(2) was not justifiable under s. 1 of the Charter.
2. However, the rest of s. 30 was justifiable under s. 1 of the Charter.

**DECISION REASONS:**
**Cory (with Dickson, Lamer)**

**Section 1**

Cory concluded that s. 30 of the Act was not justifiable under s. 1 of the Charter. While the objective of the legislature was of sufficient importance, it nevertheless failed the proportionality test.

**Importance of the objective**

The objective of s. 30 differed in regards to it various subsections. The Attorney General of Alberta put forward three objectives for s. 30(1). They included: (1) to safeguard of public morals, (2) to ensure that access to the courts for those who might wish to litigate matrimonial manners, and (3) to protect the privacy of those litigating. In regards to the first objective, the Attorney General argued that the publication of allegations of adultery and matrimonial misconduct threatened public morals. However, for Cory, while this may have been an issue when the legislation was enacted in 1935, this was no longer an issue in contemporary society. In regards to the second objective, the Attorney General argued that if individuals had the knowledge that their litigation would be publicly known, they may not seek their rights in court. However, for Cory, this argument was suspect. Current statistical data had shown that, even in jurisdictions where the press had free access to litigation, more and more individuals where seeking their rights in court and were not being deterred by the publicity. In regards to the third objective, however, Cory agreed that it was of sufficient importance. The right to privacy is an important value in society that should be protected, even in cases where it infringes upon Charter rights.

The Attorney General put forward two objectives for s. 30(2). They included: (1) to ensure the right to a fair trial and (2) to protect reputations and privacy. As above, Cory found that the protection of privacy was of sufficient importance to infringe upon Charter rights.
Hence, because protection of privacy was a sufficiently important objective of s. 30, Cory concluded that s. 30 passed the first part of the s. 1 analysis.

**Proportionality test**

However, Cory concluded that s. 30 failed the second part of the s. 1 analysis: the proportionality test. First, s. 30 does not represent a minimal impairment of the freedom of expression. The section prohibits the publication of a wide range of content in regards to court proceedings. Furthermore, the right to report freely on trial proceedings is an important right in society. For Cory, a free and democratic society necessitates a court system that is open to the public through the press. Finally, other measures that had a lesser effect upon freedom of expression could have been taken. For example, the prohibition of publication on a case-by case basis, not in every case as demanded by s. 30.

Second, for Cory, s. 30 did not achieve proportionality between the attainment of its objective and its effects upon the protected right. As noted above, the prohibition of publication was broad in its scope and sweeping in its effect. Furthermore, other means were available to the government to achieve its objective. Finally, Alberta was unique in its ban, as no other jurisdiction in Canada had found it necessary to impose such legislation to protect the privacy of litigants.

**Outcome**

Cory concluded that the appeal should be allowed. In sum, Cory asserted that while the objective of s. 30 was of sufficient importance (the protection of privacy), it nevertheless failed the proportionality test. The section went too far in impairing the right of freedom of expression and did not reflect proportionality between the attainment of its objective and its effect upon the freedom of expression. As such, for Cory, s. 30 could not be justified under s. 1 of the Charter.

**CONCURRING REASONS**

**Wilson**

**Application of the Charter**

Wilson asserted that there are two possible approaches to the application of the Charter: abstract and contextual. The abstract approach asserted the value of a right or freedom in a universal manner. For Wilson, this was the approach taken by Cory in his assertion that the freedom of expression was fundamental to the historic development of the political, social and educational institutions of Canada. As such, for Cory, freedom of expression has a fundamental importance no matter the circumstances. The contextual approach, in contrast, asserts the values of a right or freedom within the context of each particular case. As such, the value of a right or freedom is not universally asserted, but is understood to vary depending on the particular circumstances. For Wilson, the contextual approach was the proper one to take when applying the Charter, as it was more conducive to finding a fair compromise between two competing values under s. 1.
The Conflicting Values of the Case

For Wilson, there were two conflicting values in this case: (1) the right of litigants to protect their privacy in court proceedings and (2) the right of the public to an open court process, which included the right of the press to properly report on court proceedings. For Wilson, the importance of these two values must be understood through a contextual approach.

For Wilson, the value of an open court process is founded on five needs. First, the need to maintain an effective evidentiary process. Second, the need to ensure that the judicial process is fair and consistent with the values of society. Third, the need to show that the courts operate with integrity and dispense justice. Fourth, the need to educate the public on the structures, procedures and effects of the court system. And fifth, the need of litigants to feel vindicated by a public airing of their successful litigation.

For Wilson, the value of privacy of the litigants was closely related to the protection of one's dignity or, more specifically, protection from the personal anguish and loss of dignity that may result from having embarrassing details of one's private life printed in the newspapers. Furthermore, the importance of this right was dependent upon two things: the persons involved in the litigation and the nature of the allegations. The greater the public persona of individuals involved in the case, the greater the public and press interest and, therefore, the greater the potential for loss of dignity. Similarly, the more scandalous the allegations, the greater the public and press interest and, therefore, the greater the potential for loss of dignity. In a court proceeding that was "run of the mill," there would be no need for a prohibition upon the press.

Section 1

Wilson concluded that, in using a contextual approach, s. 30 could not be justified under s. 1. She agreed with Cory that the first two requirements of the s. 1 analysis were met by the legislation. The protection of privacy was an objective of sufficient importance to warrant Charter infringement. Furthermore, s. 30 was rationally connected with the objective. Furthermore, Wilson asserted that the legislation did not meet the required degree of proportionality. For her, a limiting of the press may be justifiable in some cases. However, by making such a limitation standard in all case, s. 30 of the Act goes to far.

Outcome

Wilson concluded that the appeal should be allowed. In sum, she concluded that the application of the Charter should be done in a contextual manner: in contrast to the abstract approach taken by Cory. Furthermore, while a limiting of the press may be justifiable in some case, s. 30 went to far by limiting the press in all cases. Consequently, the section could not be justified under s. 1 of the Charter.

DISSENTING REASONS

La Forest, (with L□Heureux-Dube and Sopinka)
**Sections 30(1) and 30(3) of the Act**

La Forest concluded that s. 30(1), in combination with s. 30(3), was justifiable under s. 1 of the Charter.

**Importance of the objective**

For La Forest, the objective of s. 30(1) was of sufficient importance to warrant a Charter infringement, that objective being the protection of the privacy of the parties involved with the legislation. In a matrimonial court case, individuals are forced to reveal many personal and possibly humiliating details about their lives. Furthermore, the revealing of such information did not serve the public interest in any great manner. Finally, the unrestrained release of information would also discourage individuals from seeking their rights in court. For La Forest, s. 30(1) therefore passed the first requirement of s. 1 analysis.

**Proportionality test**

S. 30(1) also passed the proportionality test. First, the legislation was rationally connected to the objective of securing privacy. Second, the legislation minimally impaired freedom of expression, by only excluding that which was specific to personal and family matters. Finally, it was proportionate as it respected the principle of open court by allowing. It did so by (1) allowing the release of general information concerning the trial and (2) allowing the release of more details under the judge’s discretion with s. 30(3) of the Act.

**Section 30(2) of the Act**

However, La Forest concluded that s. 30(2) of the Act was not justifiable under s. 1 of the Charter. He agreed with the reasons of Cory that the section was simply too broad a restriction.

**Outcome**

La Forest concluded that the appeal should be allowed in regards to s. 30(2) of the Act. However, the appeal should be dismissed in regards to the rest of the section. In sum, he asserted that s. 30(1), in combination with s. 30(3), had a sufficiently important objective and passed the proportionality test. However, he agreed with Cory that s. 30(2) was too broad a restriction and, as such, failed the proportionality test.