

COURT OF APPEAL FOR ONTARIO

CITATION: Working Families Coalition (Canada) Inc. v. Ontario
(Attorney General), 2023 ONCA 339

DATE: 20230510

DOCKET: C70178, C70197 & C70212

Benotto, Zarnett and Sossin JJ.A.

BETWEEN

Working Families Coalition (Canada) Inc., Patrick Dillon, Peter MacDonald,
Ontario English Catholic Teachers' Association, The Elementary Teachers'
Federation of Ontario, Felipe Pareja, the Ontario Secondary School Teachers'
Federation and Leslie Wolfe

Applicants (Appellants)

and

The Attorney General of Ontario

Respondent (Respondent)

and

The Canadian Civil Liberties Association, Centre for Free Expression at Ryerson
University, Criminal Lawyers' Association, Democracy Watch, and the Chief
Electoral Officer of Ontario

Intervenors (Intervenors)

Howard Goldblatt, Christine Davies, and Anna Goldfinch, for the appellants the
Elementary Teachers' Federation of Ontario and Felipe Pareja

Paul Cavalluzzo, Adrienne Telford, Michelle Thomarat, and Kylie Sier, for the
appellants Working Families Coalition (Canada) Inc. and the Ontario English
Catholic Teachers' Association

Susan Ursel, Kristen Allen, Emily Home, and Natasha Abraham, for the
appellants the Ontario Secondary School Teachers' Federation and Leslie Wolfe

Robert W. Staley, Jonathan G. Bell, Douglas A. Fenton, Andrew N. Sahai, and Megan E. Steeves, for the respondent the Attorney General of Ontario

Stephen Aylward and Dragana Rakic, for the intervener the Chief Electoral Officer of Ontario

Jamie Cameron, Christopher D. Bredt, Mani Kakkar, and Daniel Milton, for the intervener Centre for Free Expression at Ryerson University

Crawford Smith, Matthew Law, and Patrick Wodhams, for the intervener Democracy Watch

Lindsay Rauccio, Stephen Armstrong, W. David Rankin, and Graham Buitenhuis, for the intervener the Canadian Civil Liberties Association

Heard: June 15-16, 2022, with supplementary written submissions on March 21, 2023 and March 31, 2023

SUPPLEMENTARY REASONS REGARDING THE EXTENT OF THE REMEDY AND COSTS

Zarnett and Sossin JJ.A.:

[1] By reasons dated March 6, 2023, we allowed the appellants' appeal, concluded that s. 37.10.1(2) of the *Election Finances Act*, R.S.O. 1990, c. E.7 ("EFA"), unjustifiably infringes s. 3 of the *Canadian Charter of Rights and Freedoms* ("Charter"), declared that provision to be of no force or effect, and ordered the declaration suspended for 12 months to allow Ontario to fashion Charter compliant legislation: *Working Families Coalition (Canada) Inc. v. Ontario (Attorney General)*, 2023 ONCA 139, at paras. 142-43. Section 37.10.1(2) of the EFA imposes a \$600,000 spending limit on political advertising by a third party during the 12-month period preceding the issuance of a writ for a fixed-date

general election, as well as a \$24,000 spending limit during that timeframe for advertising in any particular electoral district.

[2] At para. 142 of our reasons, we invited counsel for the appellants and the Attorney General to make written submissions on whether any further provisions of the *EFA* should be declared invalid as a result of the reasoning in the judgment. We have received and reviewed submissions from the appellants and the Attorney General on this topic.

[3] In their supplementary submissions, the appellants ask this court to invalidate the following additional *EFA* provisions:

- The definition of “political advertising” in s. 1(1);
- s. 37.0.1 (considerations for assessing whether an advertisement is “political advertising”);
- s. 37.10.1(3)-(3.1) (anti-circumvention); and
- s. 37.10.2 (interim reporting requirements).

[4] We agree with the Attorney General that the appellants’ request should be rejected.

[5] The additional provisions apply to the pre-writ spending limits (set out in s. 37.10.1(2)) that we found to infringe s. 3 of the *Charter*, but also to the election period spending limits for third parties (set out in s. 37.10.1(1)). The election period

spending limits were not the subject of these appeals and remain in force. The definition of political advertising also applies to other *EFA* provisions not challenged by the appellants on these appeals. This context significantly undermines the appellants' argument that the additional provisions are inextricably linked to the constitutionally invalid pre-writ spending limits set out in s. 37.10.1(2).

[6] We are also not satisfied that our reasons for invalidating s. 37.10.1(2) of the *EFA* apply to the additional provisions, such that they infringe s. 3 of the *Charter*. It has not been shown how any of the additional provisions breach s. 3 of the *Charter*, or will do so upon the coming into effect of the declaration in our March 6, 2023 reasons that the pre-writ spending limits are of no force or effect. Nor has it been shown that any of the additional provisions would breach s. 3 of the *Charter* if new constitutionally compliant pre-writ spending limits were enacted.

[7] Accordingly, we decline to declare any of the additional provisions of the *EFA* invalid.

[8] In our March 6, 2023 reasons, we also invited submissions on costs. The parties advise that they have agreed on costs in this court and the court below. Accordingly, we make no disposition as to costs.

"B. Zarnett J.A."
"L. Sossin J.A."

Benotto J.A.:

[9] Although I concluded that there was no breach of s. 3, I agree that no further provision of the *EFA* should be declared invalid. I also agree that there should be no disposition as to costs.

Released: May 10, 2023 "M.L.B."

"M.L. Benotto J.A."