

CANADA / JUDGMENT

Patterson v. British Columbia (Attorney General)

1999 BCCA 645

COURT

British Columbia Court of Appeal

DECIDED

10 November 1999

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C99-0645.html

Citation: Patterson v. British Columbia

(Attorney General) Date: 19991110

1999 BCCA 645 Docket:

CA024941

Registry: Vancouver

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

ELWYN PATTERSON and

THE MARGINALIZED WORKERS ACTION LEAGUE

PETITIONERS

(APPELLANTS)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA,

MINISTRY OF HUMAN RESOURCES and

MERVIN W.C. HARROWER

RESPONDENTS

(RESPONDENTS)

Before: The Honourable Madam Justice Southin

The Honourable Mr. Justice Hollinrake

The Honourable Madam Justice Ryan

David W. Mossop, Q.C. and

Frances M. Kelly Counsel for the Appellants

Harvey M. Groberman, Q.C. Counsel for the Respondents

Place and Date of Hearing: Vancouver, British Columbia

17 September 1999

Place and Date of Judgment: Vancouver, British Columbia

10 November 1999

Written Reasons by:

The Honourable Mr. Justice Hollinrake (pp. 1-21, paras. 1-55)

Concurring Reasons by:

The Honourable Madam Justice Southin (pp. 22-23, paras. 56-61)

Dissenting Reasons by:

The Honourable Madam Justice Ryan (pp. 24-28, paras. 62-72)

Reasons for Judgment of the Honourable Mr. Justice Hollinrake:

NATURE OF APPEAL

[1] The appellants apply for the following orders in this Court:

1. An order quashing the Respondents' requirement that the Petitioners sign consent forms pursuant to B.C. Regulation 123/98 [now B.C. Reg. 287/98] (the "Consent Form") in order to receive income assistance.
2. An order prohibiting the Respondents from interrupting or cancelling the Petitioners' income assistance.
3. A declaration that the Consent portion of the B.C. Benefits (Income Assistance) Act application form, B.C. Reg. 123/98 is void or a nullity.
4. A declaration that the Consent portion of the B.C. Benefits (Income Assistance) Act application form, B.C. Reg. 123/98 is contrary to Section 7 or 8 of the Charter of Rights and not saved by section 1 of the Charter of Rights.
5. Such other order or declaration that this court deems appropriate.

- [2] The relief claimed before this Court is not precisely the same as in the court below. However, it is the same in substance. The chambers judge dismissed the application in reasons for judgment which can be found at [1998] B.C.J. No. 1725 (S.C.)(QL).
- [3] It should be noted that the style of cause has been amended since the chambers proceedings by striking out Her Majesty the Queen as a respondent and substituting the Attorney General of British Columbia.

BACKGROUND

- [4] The Province of British Columbia, under the auspices of the Ministry of Social Development and Economic Security [formerly known as the Ministry of Human Resources], operates a system of income assistance pursuant to the B.C. Benefits (Income Assistance) Act, R.S.B.C. 1996, c.27 (the "Benefits Act").
- [5] The Benefits Act covers those persons who apply for income assistance who are neither seriously disabled nor youths. Criteria for eligibility and the amount of assistance available to each applicant are specified in B.C. Regulation 75/97, the Income Assistance Regulation. Accordingly, eligibility and the amount of assistance to be provided depends, in part, upon the applicant's assets and income, cost of shelter, and dependency relationships (i.e. whether the individual is supported by, or is supporting other persons). Therefore, to assess eligibility, clients must provide to the Ministry information with respect to their identity, address, assets, sources and amounts of income and support, and cost of shelter. The requirement to provide this information is not challenged in these proceedings.
- [6] Verification and auditing of information obtained from applicants has taken place for a number of years. However, recently, the Ministry has included a form of consent to disclosure of information on the application form for income assistance. In January and February of 1998, the Ministry indicated that it would be requiring consent forms to be signed by all applicants for and recipients of income assistance.
- [7] The impugned ministerial regulation, B.C. Reg. 123/98, sets out the form that an applicant must complete in order to apply for assistance. This form includes a mandatory consent portion which authorises certain types of outside institutions or public agencies to provide "verification of your personal information" to the Ministry. It is only this portion of the form that is being challenged in these proceedings. The consent form is as follows:

CONSENT: The following organizations require your written permission before they will provide verification of your personal information:

- Workers' Compensation Board (WCB);
- Any financial institution, such as: banks, credit unions and trust companies;
- Vital Statistics;

- Insurance Corporation of B.C. (includes the former Motor Vehicle Branch);
- Revenue Canada (see below);
- Lottery Corporation of B.C.;
- Cheque cashing services; and
- Credit Bureaus.

[8] The same form also includes a separate consent for the release of information by Revenue Canada. The application itself contains the following line just above the signature of the applicant:

I give permission to the organizations listed above to release information relevant to my eligibility for assistance to employees of MHR or MAETT:

[9] The application form, in addition to the consent, also provides notification to applicants that other persons or bodies may release information to the minister. This notification does not have any impact on the consent itself as those bodies either do not require consent before releasing information or have discretion to provide information which is unaffected by a consent form.

[10] It should be noted that effective August 22, 1998, after the chambers decision in this case had been entered, the forms prescribed by B.C. Regulation 123/98 were replaced with forms prescribed by B.C. Regulation 287/98. However, the challenged consent portion of the forms is substantively identical in the two regulations. This appeal proceeded on the basis that the decision of this Court with respect to B.C. Reg. 123/98 would apply equally to B.C. Reg. 287/98.

The Petitioners

[11] The first appellant, Elwyn Patterson is unemployed and relies on income assistance. On January 19, 1988, Mr. Patterson received a letter from an official of the Ministry, Mr. Harrower, requiring him to sign a consent form by February 20, 1998. The letter indicated that his failure to do so "may result in an interruption in your assistance".

[12] Dariush Sayeghan is unemployed. He is a member of the Marginalized Workers Action League, the second appellant in these proceedings. On February 23, 1998, Mr. Sayeghan applied for income assistance. He refused to sign the consent form and as a result was told that his file would be closed.

[13] The issues on appeal are:

1. Is the mandatory consent portion of the application form ultra vires the power of the Minister of Human Resources [now the Minister of Social Development and Economic Security] under the Benefits Act?

- i) Can this new issue be raised on appeal not having been argued in the court below?
- ii) Does the Minister have statutory authority to prescribe a mandatory consent form?
- 2. Does the blanket application of the consent form fetter the Minister's discretion - must the Minister decide each application for eligibility and the requirement to sign a consent form on an individual basis?
- 3. Does the mandatory consent requirement violate the appellants' rights under section 7 or 8 of the Canadian Charter of Rights and Freedoms, in a way not justified under section 1?

Is the mandatory consent portion of the application form ultra vires the power of the Minister under the Benefits Act?

[14] The appellants submit that the Consent Form is ultra vires the Benefits Act, as being beyond the scope of the power delegated by statute to the Minister. Their argument is two-fold. Firstly, they argue that the Benefits Act does not give the Minister the power to prescribe a form that requires consent for verification. Secondly, they argue that even if the Minister does have this power, the consent form would still be ultra vires because it can not be mandatory for all applicants and recipients of income assistance.

- i) Can this new issue be raised on appeal not having been argued in the court below?

[15] The first question facing this Court on this issue is whether it can be raised on appeal not having been argued in the court below.

[16] The ability of a party to raise a new issue on appeal is governed by the principles set out by this Court in *R. v. Vidulich* (1989) 37 B.C.L.R. 391 at 398 (C.A.):

It is perfectly proper to raise a supplementary argument on appeal that was not raised at trial, if the supplementary argument goes to an issue or ground that was itself raised at trial. But it requires leave of the court before an altogether new and independent issue or ground can be raised on appeal that was not raised at trial.

The decision whether to grant leave is a matter for the discretion of the court. The exercise of the discretion will be guided by balancing the interests of justice as they affect all the parties...

The result is that it is only in those exceptional cases where balancing the interests of justice to all parties leads to the conclusion that an injustice has been done, that a new ground is likely to be permitted to be raised on appeal... [A] new ground is more likely to be permitted where it raises an issue of law alone than where it requires the leading of evidence either in the appeal court or at a new trial.

[17] In my view, this is an appropriate case to allow the appellants to raise these arguments. This is an issue of law

alone and does not require the development of new evidence. The Ministry can show no prejudice. In my opinion, the interests of justice require this Court to consider these arguments.

ii) Does the Minister have statutory authority to prescribe a mandatory consent?

[18] B.C. Regulation 123/98, prescribed pursuant to Ministerial Order, sets out the application form for income assistance under the Benefits Act. This prescribed application form includes the impugned mandatory consent requirement. The appellants' primary contention is that no provision in the statute empowers the Minister to prescribe a mandatory consent.

[19] The legislative provision dealing with application forms is section 2 of the Income Assistance Regulation which provides that applicants for income assistance must complete an application form. Section 1 of the Income Assistance Regulation defines application as "... an application in the form prescribed by the minister".

[20] Section 19(2) of the Benefits Act provides:

19(2) The minister may do either or both of the following:

- a) prescribe forms for use under this Act;
- b) specify forms for use under this Act.

[21] The appellants argue that while section 19 gives the Minister power to prescribe forms, this power does not encompass the power to prescribe the contents of the form. They contend that the power to prescribe the contents of the form is reserved solely for the Lieutenant-Governor in Council in section 24(2) of the Act which provides in part:

24(2) ... the Lieutenant Governor in Council

may make regulations as follows:

- (e) respecting applications for income assistance, hardship assistance and benefits, and the information, authorizations and verifications that must be provided in support of those applications; [emphasis added]
- (k) specifying conditions on which income assistance, hardship assistance and benefits may be provided, and the consequences of failing to comply with those conditions;

[22] The interpretation of the above sections as submitted by the appellants is that section 19 gives the Minister only limited authority to put in form that which has already been prescribed by the Lieutenant-Governor in Council under section 24. Accordingly, the Minister can only direct the form and not the contents. As there is currently no regulation of the Lieutenant-Governor in Council setting out what verification of information must be provided, the appellants argue the consent portion is void ab initio.

[23] I cannot agree with this interpretation of the Minister's powers under section 19 and 24(2) of the Benefits Act. In my view, such a narrow interpretation is not consistent with the Act insofar as the powers of the Minister are concerned. Of particular relevance in this regard is section 8 of the Act which sets out the power of the Minister to require information and to seek verification of information provided by applicants and recipients of income assistance:

8(1) For the purpose of determining or auditing eligibility for income assistance, hardship assistance or benefits ..., the minister may do one or more of the following:

- a) direct an applicant or recipient to supply the minister with information within the time and in the manner specified by the minister;
- b) seek verification of any information supplied to the minister by an applicant or recipient;
- c) direct an applicant or recipient to supply verification of any information supplied to the minister by the applicant or recipient

[emphasis added]

[24] The Ministry argues that while section 8 does not specifically refer to a mandatory consent, this consent is a tool required by the Minister to exercise her power in section 8(1)(b) to "...seek verification of any information...". I agree with this observation.

[25] In *Driedger on the Construction of Statutes* (3rd ed.) (Toronto: Butterworths, 1994) at p.74, the learned authors state that the foremost method of statutory construction is the purposive approach:

Narrowly drawn powers are understood to include "by necessary implication" all that is needed to enable the official or agency to achieve the purpose for which the power was granted.

[26] The delegation of legislative authority to the Minister in section 8 is a specific grant of power to make regulations "for the purpose of" determining eligibility for income assistance. To determine whether the power to prescribe a mandatory consent is included in section 8 "by necessary implication", it is necessary to assess the legislative purpose behind the section 8 grant of power.

[27] In *Federated Anti-Poverty Groups of B.C. v. B.C. (Minister of Social Services)* (1996), 41 Admin L.R. (2d) 158 (B.C.S.C.), Spencer J. said the following about the statutory purpose of the G.A.I.N. Act (the old Benefits Act), with which I agree:

... In my respectful opinion, the purposes of G.A.I.N., while they include the relief of poverty, neglect or suffering, also include the execution of the purpose within the budgetary allowance to be provided by the legislature from time to time and the establishment of the Minister's discretionary powers to achieve it.

[28] This view can be seen in the preamble to the Benefits Act which recognises that "income support programs should be financially and administratively accountable".

- [29] In my view the purpose of the grant of power in section 8 is to allow the Minister to ascertain eligibility criteria of applicants for income assistance in order to maintain financial and administrative accountability for public funds. Prescribing a mandatory consent is necessarily incidental to achieve this purpose.
- [30] The fact that this power is similar to the power of the Lieutenant-Governor in Council to demand "authorisations and verifications" under section 24(2)(e) is in my opinion mere duplication and can not be said to limit the Minister's combined powers under sections 8 and 19.
- [31] As I see it, the combined powers found in sections 8 and 19 give the Minister authority to include a mandatory consent provision in the application forms for income assistance. Such a provision is ancillary to the Minister's statutory power to verify information and in my opinion, by including it, the Minister did not exceed her statutory authority.
- [32] On the basis of the conclusion reached above, it is unnecessary to consider the Ministry's alternative argument that the Minister has authority to require applicants to complete a mandatory consent pursuant to section 3 of the Benefits Act which confers upon the Minister an overriding discretion to provide income assistance to eligible candidates.
- [33] Further, the appellants say this mandatory consent in every application fetters the discretion of the Minister under s. 8(1)(b). The appellants argue that this section requires the Minister to consider each application on its own and does not give the Minister authority to impose a requirement that every applicant for income assistance must sign a consent form.
- [34] Section 8(1)(b) of the Benefits Act provides that the Minister may seek verification of information. While this is a discretionary power, in my view, it is subject to the provisions of regulations made under the Act. Section 2(1)(a)(ii) of the Income Assistance Regulation provides:
- 2(1) To be eligible for income assistance, an applicant must
- a) complete and application and ... supply the minister with...
- ii) proof of the identity of each person in the family and of their eligibility under the Act and this regulation, ...
- [35] Thus, the requirement to provide "proof of eligibility" is a mandatory requirement of eligibility for income assistance. The appellants argue that "proof of" refers to information given by the applicant and not to verification. With respect, I do not accept this narrow interpretation of "proof of". I think section 2 of the Income Assistance Regulation gives the Minister authority to prescribe a consent form of blanket application.
- [36] I conclude the appellants challenge on this ground fails.

Does the blanket application of the consent form fetter the Minister's discretion - must the Minister decide each application for eligibility and the requirement to sign a consent form on an individual basis?

[37] Under this head, the appellants argue that the Ministry pursued a policy of terminating eligibility for income assistance to those prior recipients of assistance who, when required, did not complete the consent form. They contend that this policy of "automatic termination" is an improper fettering of the Minister's discretion under section 8(3) of the Benefits Act.

[38] Section 8(3) gives the Minister a discretion to terminate benefits of those who do not comply with requests made under section 8:

8(3) If a person fails to comply with a direction under subsection (1)a) or (c) ..., the minister may do one or more of the following:

- a) declare the person and any dependants ineligible for income assistance, hardship assistance or benefits until the person complies;
- b) reduce any income assistance or benefits provided to or for the person or a dependant.

[39] The appellants contend that automatic termination prevents the Minister from putting her mind to the issue in accordance with her discretionary duty under this section. The Minister's response to this submission is found in their factum as follows:

Had the Appellants raised issues of fettering of discretion in their Petition or in the Court below, an evidentiary record dealing with an alleged instance of fettering could have been produced, and the Court below might have examined the facts to determine whether the Minister had inappropriately fettered her discretion. Having failed to make the allegation, and having failed to produce any evidence in support of such an allegation, it is not appropriate for the Appellants to make fettering arguments before this Honourable Court.

[40] I agree with this position.

Does the mandatory consent violate the appellants' rights under section 7 or 8 of the Charter?

[41] The appellants argue that the mandatory consent form violates their rights under section 7 and 8 of the Canadian Charter of Rights and Freedoms. Those sections provide as follows:

section 7: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

section 8: Everyone has the right to be secure against unreasonable search or seizure.

- [42] The appellants first contention is that the mandatory consent constitutes an unreasonable search and seizure and as such is a violation of the Charter. Assuming that these facts disclose a "search and seizure" within the meaning of section 8 of the Charter, it seems to me that the real complaint here is that the Ministry is unreasonably invading the appellants' privacy. That being so, I think it is appropriate to deal with sections 7 and 8 together under the rubric of invasion of privacy.
- [43] In my opinion, before it can be said that the guaranteed Charter right has been engaged, the appellants must show that the mandatory consent scheme results in a denial of their reasonable expectation of privacy.
- [44] As I understand the appellants, if this consent requirement was done on an individual basis then it would not be unreasonable. What is unreasonable, say the appellants, is the blanket application of the consent requirement. To further clarify the appellants' position, counsel says that a spot audit scheme would not be a violation of the Charter as opposed to the present blanket scheme.
- [45] In approaching the argument put forward by the appellants, it is important to recognize the limited nature of the Charter challenge. It is not to the requirement that applicants for and recipients of income assistance disclose personal information in order to be eligible for such assistance. Neither is this a challenge to the general powers of the Minister in section 8 of the Act to seek verification and audit information.
- [46] The form of consent is reproduced above. To repeat, it gives to the Minister the applicant's consent to seek, from specified agencies, verification of information that is provided in the application form.
- [47] The appellants contend that the consent form infringes their right to privacy as it forces them to disseminate a core of "biological information" to the state. They argue that the consent form permits the government to obtain information which goes beyond the question of eligibility for income assistance.
- [48] As they put it, the concern of the appellants is the alleged ability of the Ministry to obtain information from "relatives, friends, employers and even doctors and lawyers".
- [49] In my view, while these concerns would otherwise be met with sympathy, they do not apply in the context of the challenged consent scheme. In my opinion, the chambers judge correctly interpreted the limitations on this form of consent. The three limitations, which I will discuss in turn, should serve to alleviate the fears of the appellants and ensure that no Charter right is breached.

[50] The first limitation stems from the use of the phrase "verification of your personal information". By definition, the Ministry is unable to "verify" a fact unless it already has the fact. Thus, the information gathered under the consent is authorized to be used only to verify personal information already provided by the applicant. No new information can be obtained. I agree with the chambers judge where he said that once an applicant has provided the information required by the application form to the Ministry:

... the applicant cannot [then] be heard to say a reasonable expectation of privacy can be raised to prevent the Ministry from verifying that same information.

[51] The second limitation on the form of consent is that express permission is given to outside agencies that they may release information only if it is "relevant to my eligibility for assistance". I agree with the comments of the chambers judge on this issue:

In my view, the expression "relevant to my eligibility" restricts the information which may be released to information touching upon the requirements of eligibility pursuant to the Act and its regulations. That is to say outside organizations, at the request of the Ministry, may release to the Ministry information relating to the place of residence, the assets, the income, the cost of shelter, and the dependency relationships of the applicant. To disclose any additional information would be to act beyond what is contemplated by the consent.

[52] The third limitation on the consent is that it is applicable to the release of information by only the listed organizations. The consent does not enable the Ministry to obtain information from those outside the listed agencies.

[53] Finally, I think the chambers judge was right when he said:

The petitioners further argue that the execution of a consent permitting various outside agencies and institutions to provide information to the Ministry may lead to a mis-use of that information by the officer or bureaucrat obtaining the information. Although this is speculation, it is a possibility. However, I am satisfied that should an employee of the Ministry mis-use information obtained pursuant to the consent given by the applicant, that employee would be guilty of a wrongdoing. She or he would have acted in a manner inconsistent with the statute and/or inconsistent with the Freedom of Information Act. But the wrong act of an employee does not of itself render the underlying legislative enactment ultra vires or contrary to the Charter: see *Slaight Communications Inc. v. Davidson* (1989) 59 D.L.R. (4th) 416 (S.C.C.).

[54] In conclusion, I think the boundaries of the consent are appropriately circumscribed such that it cannot be said that there was a breach of any Charter right.

[55] I would dismiss the appeal.

"The Honourable Mr. Justice Hollinrake"

Reasons for Judgment of the Honourable Madam Justice Southin:

- [56] I have had the privilege of reading in draft the reasons for judgment of my colleague, Mr. Justice Hollinrake. I concur with both his conclusion and the reasons therefor. It is only because of the importance of the underlying issue which I see as a contest between the petitioners' claim of privacy and the Crown's responsibility for the public purse that I add a few words of my own.
- [57] In considering this issue, I have had in mind the importance of B.C. Benefits. As of July 1999, six and two-thirds per cent of the Province's population of approximately four million were receiving benefits under the legislation. In fiscal 1998-99, the treasury expended in benefits and grants approximately \$1.4 billion, or a little over \$350 for every man, woman and child who is not receiving benefits.
- [58] It is essential to the continuation of B.C. Benefits or any successor scheme for the relief of poverty that the tax-paying public have confidence that only those entitled are receiving public funds.
- [59] If the public were to cease to have such confidence, who can say what would be the outcome?
- [60] The purpose of the provisions referred to by my colleague is to maintain that confidence by preventing persons not entitled to benefits from receiving them and the provisions must be interpreted with that purpose in mind.
- [61] Indeed, looked at in that way, the provisions ultimately are to the benefit of and not to the detriment of those now receiving, or who may hereafter be in need of, such benefits.

"THE HONOURABLE MADAM JUSTICE SOUTHIN"

Reasons for Judgment of the Honourable Madam Justice Ryan:

- [62] I have had the opportunity to read the reasons for judgment of my colleague Mr. Justice Hollinrake. I agree with his conclusion that the Minister possesses the statutory power to require blanket mandatory consents from applicants for public welfare for the purpose of verifying their entitlement to benefits. I do not agree however, that the form of consent required in this case passes Charter muster.
- [63] In *R. v. Plant*, [1993] 3 S.C.R. 281, the Supreme Court of Canada identified one context in which the right to privacy would generally arise in respect of documents and records (at p. 269):

In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual.

[64] In *R. v. O'Connor*, [1995] 4 S.C.R. 411, the Supreme Court of Canada recognized a complainant's right to privacy with respect to personal material contained in psychiatric records. Madam Justice L'Heureux-Dubé, who was in the majority on this point, held that the right to privacy was a principle of fundamental justice recognized in s. 7 of the Charter. She said at p. 483:

In the same way that this Court recognized in *Re B.C. Motor Vehicle Act*, [[1985] 2 S.C.R. 486], that the "principles of fundamental justice" in s. 7 are informed by fundamental tenets of our common law system and by ss. 8 to 14 of the Charter, I think that the terms "liberty" and "security of the person" must, as essential aspects of a free and democratic society, be animated by the rights and values embodied in the common law, the civil law and the Charter. In my view, it is not without significance that one of those rights, s. 8, has been identified as having as its fundamental purpose "to protect individuals from unjustified state intrusions upon their privacy" (*Hunter*, [infra], at p. 160). The right to be secure from unreasonable search and seizure plays a pivotal role in a document that purports to contain the blueprint of the Canadian vision of what constitutes a free and democratic society. Respect for individual privacy is an essential component of what it means to be "free". As a corollary, the infringement of this right undeniably impinges upon an individual's "liberty" in our free and democratic society.

[65] A citizen's right to privacy must give way to that of the state if the state can demonstrate a superior interest: *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145. In the case at bar that interest is the requirement that the state be in a position to verify personal information upon which the application for public welfare is based. I agree that this is a valid state interest which is superior to that of the individual who applies for public benefits. I do not agree however that the consent form in question is limited to verification of the information supplied by the applicant.

[66] The portion of the consent form at issue is the following:

I give permission to the organizations listed above to release information relevant to my eligibility for assistance to employees of MHR or MAETT: . . .

[Emphasis added]

[67] I do not read this form as confining the information that may be disclosed to a verification of the information supplied by the applicant. The consent is not limited in that way. Rather, it leaves to the government employee and the custodian of the applicant's records to determine, in their eyes, what information might be relevant to the applicant's eligibility.

[68] The phrase "relevant to my eligibility for assistance" gives no direction to either the government official, or the institution to which the request for information is made, as to exactly what information ought to be released and what should remain private. To paraphrase Lamer J. (as he then was) in *Reference Re: Criminal Code (Man.)*, [1990] 1 S.C.R. 1123 at 1157, the language of the mandatory consent form is so broad that it permits a standardless sweep by allowing government officials, wittingly or unwittingly to pursue

their own personal predilections in determining what information is "relevant."

- [69] Since the benefits scheme under consideration covers a range of health and personal benefits, as well as disability benefits for persons so defined, private relationships and clinical records are at risk of indiscriminate disclosure.
- [70] In my view the mandatory requirement that the applicant for public welfare provide such a wholesale consent is unreasonable and a violation of the applicant's right to liberty found in s. 7 of the Charter.
- [71] Mr. Groberman, counsel for the Attorney General, restricted his argument to a submission that the consent form must be interpreted as permitting the government to verify information upon which the application for public welfare is based. He did not take issue with the remedies sought by the petitioners nor did he say that if the consent form is of a sweeping nature that it would be justified under s. 1 of the Charter.
- [72] In the result I would allow the appeal and declare that the consent portion of the B.C. Benefits (Income Assistance) Act application form, B.C. Reg. 123/98, is contrary to s. 7 of the Canadian Charter of Rights and Freedoms and is not saved by s. 1 of the Charter.

"The Honourable Madam Justice Ryan"

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Prepared on 26 October 2026 · Esheria