

THE BRITISH COLUMBIA COURT OF APPEAL HAS THE FINAL WORD ON THE CONSTITUTIONALITY OF THAT PROVINCE'S *SCHOOL ACT* WHICH PERMITS SCHOOL BOARDS TO REQUIRE EMPLOYEES, ON PAIN OF DISMISSAL, TO UNDERGO A MEDICAL EXAMINATION

B. C. Teacher's Federation v. School District No. 39, 2003 BCCA 100; SCC denied leave to appeal on November 17, 2003

Based on recommendations from the Vancouver School Board's occupational health services physician and its school medical officer, the School Board ordered a teacher to undergo a psychiatric examination pursuant to the provisions of the B.C.'s *School Act* in light of the teacher's behaviour (including her "unusual" correspondence with the administration accusing them, amongst other things, of releasing information about her to third parties). Under the *Act*, the School Board could "summarily dismiss the employee" if he or she failed, "without reasonable excuse," to attend for the examination within 14 days. Because the teacher continually failed to attend for the psychiatric examination, the teacher was dismissed. The teacher subsequently grieved her dismissal.

Before an Arbitrator, the union argued that the mandatory referral for examination under the *Act* violated the teacher's rights under the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). The Arbitrator dismissed the grievance, finding that the provisions at issue did not engage the teacher's liberty or security interests under s. 7 of the *Charter* (the right to "life, liberty and security of the person"). On appeal, the British Columbia Court of Appeal agreed with the School Board that the legislation did not infringe either s. 7 or s. 8 (the right to freedom from "unreasonable search or seizure") of the *Charter*. Writing for the majority of the Court, Hall J.A. stated:

What is at issue in this case does not, in my opinion, rise to the level of any interest concerning the life, liberty or security of the person that would invoke the application of s. 7 of the *Charter*. La Forest J. [of the Supreme Court of Canada] noted ... that while s. 7 must be given a generous interpretation, it was important not to overshoot the purpose of the right in question. To allow s. 7 to be invoked in the context of this case, in my view, would amount to overshooting the purposes this section was designed to protect.

Since, in my opinion, the issue in this case concerns a particular employment relationship and a health issue related thereto, I do not consider s. 7 of the *Charter* can properly be engaged. I am unable in this case to discern any state interference with a liberty or security interest that should be found to be subject to s. 7 *Charter* protection.

While there are no directly analogous legislative provisions in Ontario regarding mandatory medical examinations, we note that in order to meet the basic teacher qualification requirements, the candidate must furnish the school board with "proof of freedom from active tuberculosis" (see section 2(f) of Ontario Regulation 184/97 of the *Ontario College of Teachers Act, 1996* ("Teachers Qualifications")). This requirement would appear to be constitutional based on the *B.C. Teacher's Federation* case. Further, where it is reasonable in all of the circumstances for employers to impose mandatory medical examinations (see, for example, *Fraser Valley Milk Producers Co-operative Assn. (Dairyland Foods)* (1989), 9 L.A.C. (4th) 376), any such reasonable rule would not likely run up against *Charter* values.