

**SUPREME COURT OF CANADA ISSUES DECISION ON SECTION 7 ARGUMENT
IN HUMAN RIGHTS COMPLAINT**

Blencoe v. British Columbia (Human Rights Commission)
[2000] S.C.J. No. 43 (October 5, 2000)

Facts

Robin Blencoe ("Blencoe") was an elected member of provincial parliament in British Columbia and he was serving as a minister in the cabinet in early 1995. In March 1995, a female assistant accused Blencoe of sexual harassment. Blencoe stepped down from his ministry post, but remained in cabinet pending the results of an investigation into the allegations. One month later, Premier Harcourt removed Blencoe from cabinet and dismissed him from the NDP caucus altogether.

Three months after his dismissal, two different women filed complaints of sexual harassment with the British Columbia Council of Human Rights (now called the British Columbia Human Rights Commission) (the "Commission"). Blencoe was informed of these formal complaints in July and September of 1995, but a hearing before the B.C. Human Rights Tribunal regarding these complaints was not scheduled until March of 1998, some 30 months later.

Perhaps not surprisingly given Blencoe's position as a public figure, the media paid a tremendous amount of attention to the matter and Blencoe and his family were subjected to a great deal of scrutiny. Blencoe fell into a severe clinical depression and eventually moved with his family to Ontario as he considered himself to be "unemployable" in British Columbia. The family subsequently returned to B.C. because the media scrutiny had not abated in Ontario. Blencoe continued to experience social ostracization and depression up until the hearing, five years after the first allegation was made against him.

British Columbia Supreme Court

In November of 1997, Blencoe commenced judicial review proceedings before the Supreme Court of British Columbia to have the human rights complaints stayed. Blencoe argued that the Commission had lost jurisdiction to hear the complaint due to unreasonable delay in processing the complaints against him. Blencoe stated that this unreasonable delay had prejudiced his family and he contended that this amounted to an abuse of process and a denial of natural justice.

The Supreme Court dismissed Blencoe's petition.

British Columbia Court of Appeal

The Court of Appeal allowed Blencoe's appeal and directed that the complaints be stayed.

The Court of Appeal found that Blencoe had been deprived of his right to security of the person in a manner that was not in accordance with the principles of fundamental justice, contrary to s. 7 of the Canadian *Charter of Rights and Freedoms* (the "*Charter*").

Supreme Court of Canada

The Commission's appeal to the Supreme Court of Canada was allowed. The Court of Appeal's decision was set aside and the matter was remitted back to the tribunal to proceed with a hearing on the merits of the complaints.

Charter Issues

Applicability of the Charter

The Court was first required to consider whether or not the *Charter* applies to actions of a provincial human rights tribunal, such as the Commission. Section 32 of the *Charter* outlines its scope, and states that the *Charter* applies to the federal parliament, the provincial and territorial legislatures and the federal and provincial governments. The Commission argued that the *Charter* did not apply for three reasons: first, because the Commission is independent of the provincial government; second because the challenge in the case was not to any statutory provision within the legislative sphere; and finally because the Commission's functions are analogous to those exercised by a court.

In rejecting the Commission's arguments, the Court found that independence from government does not automatically imply exemption from the requirements of the *Charter*. Any body or agency that exercises statutory authority is bound by the *Charter*, regardless of the fact that it may be independent of government. The reasoning behind this requirement is that bodies created by statute are infused with more power than that possessed by individuals. Commissions of this nature have, for example, the power to investigate and adjudicate complaints without requiring the consent of the parties. It is clear that the Commission possesses far more extensive powers than that of a person, and is therefore not exempt from *Charter* requirements. The Court went on to find that there is nothing to suggest that a statutory provision must be impugned in order to attract the protection of the *Charter*. With respect to the argument that the Commission is a quasi-judicial body and is therefore not subject to *Charter* scrutiny, the Court concluded that even if a tribunal has "adjudicatory characteristics", it is still a statutory creature and as such it is required to operate subject to the requirements of the *Charter*.

Section 7 and the Concept of Liberty

After concluding that the *Charter* applied to the Commission, the Court went on to examine the applicability of s. 7. Typically, s. 7 rights are invoked in the sphere of criminal law, but the Court noted that the right to life, liberty and security of the person may arise in any situation where a state action directly engages the justice system and its administration.

In writing for the majority, Mr. Justice Bastarache noted that the concept of liberty is not restricted to situations of actual physical freedom; it may also be applied to situations where an individual's fundamental life choices are being restricted in some manner by the state. However,

the Court went on to note that this concept of a freedom to make fundamental choices is not so broad as to constitute unconstrained freedom. The Court concluded that the state had not prevented Blencoe from making any fundamental personal choices. Accordingly, Blencoe's interest in maintaining his privacy and in addressing the charges against him in a timely fashion did not fall within the concept of liberty as protected by s. 7.

Security of the Person under Section 7

Security of the person will be interpreted broadly. It is broad enough to extend beyond physical security and includes a serious state-imposed psychological stress. Security of the person will therefore be held to protect the physical and psychological integrity of the person. However, the Court noted that not all state interference with an individual's psychological integrity will warrant protection under s. 7. In order to invoke this right, the action complained of must constitute a serious, state-imposed psychological stress. The individual must be able to establish the existence of a serious psychological stress, and prove that the stress arose from the state's actions.

In *Blencoe*, the Court held that although a delay had occurred, and it was in part attributable to the Commission's failure to process the complaint in a timely fashion, there was not enough of a causal connection between that delay and Blencoe's psychological stress. The Court noted that in the spring of 1995, three months before the first complaint had even been filed with the Commission, an allegation of sexual harassment had been made, Blencoe had been ousted from the NDP government, and he had been the subject of intense media scrutiny. The Court conceded that Blencoe had suffered psychological stress, but found that the harm to Blencoe resulted from the publicity and the political fall-out arising from the initial complaint, not from any subsequent delay on the part of the Commission. In sum, the Court found that given the media attention to this matter, the prolonged stigma would have occurred regardless of the delay in the human rights matter. The only real prejudice to Blencoe was that he was deprived of the opportunity to clear his name in a speedy fashion.

"Contributing Cause" Argument

This was not the end of the matter. The Court of Appeal had found that the excessive delay in the human rights proceeding had created a stigma against Blencoe and exacerbated an existing prejudice, and was therefore tantamount to the creation of a prejudice itself. Blencoe cited Supreme Court authority for the principle that the delay in this case was a "contributing cause" of his psychological harm.

The Supreme Court rejected this argument and found that the cases cited by Blencoe were factually distinguishable. In the cases cited by Blencoe, in the absence of state action, there would have been no deprivation of s. 7 rights whatsoever, whereas in the instant case, even in the absence of any delay, Blencoe would have been faced with the stigma of the allegations against him. The Court went on to find that the harm to Blencoe's reputation had commenced prior to the filing of the human rights complaints so the delays merely extended the time that rumours were left circulating.

Dignity as a Charter-Protected Right

The Court of Appeal had held that the protection of liberty and security of the person included both privacy and dignity and protected Blencoe against the stigma of prolonged humiliation suffered as a result of a state proceeding.

In rejecting this analysis, the Supreme Court held that dignity is not a free-standing constitutional right, rather it is an underlying value. Accordingly, dignity is not afforded protection under the *Charter*. The Court went on to find that s. 7 will only be triggered where the stress and anxiety arising from an administrative or civil proceeding constitutes a profound interference in an individual's intimate and personal choices. There was held to be no such interference here. Finally, the Court noted that the notion of "stigma" as it arises in the context of criminal law had no application in civil or administrative proceedings and therefore could not be applied in these circumstances.

In sum, the Court held that while Blencoe clearly suffered stress, stigma and anxiety, he had not been deprived of his right to liberty or security of the person. The Court found that the s. 7 rights to life, liberty and security of the person were limited to these three rights, and while notions of dignity and reputation underlie these rights, they are not stand-alone rights that trigger s. 7 protection. The Court concluded that freedom from the type of anxiety, stress and stigma suffered by Blencoe in this case should not be elevated to the stature of a constitutionally protected right.

While the Court found that Blencoe had not met the first threshold of a s. 7 analysis, Mr. Justice Bastarache was careful to point out that this result does not mean that state-caused delays in human rights proceedings could never trigger an individual's s. 7 rights. The Court indicated that in other circumstances, delays in human rights proceedings might in fact violate s. 7 of the *Charter*.

Administrative Law Principles

Fairness

Although the Court concluded that Blencoe was not entitled to a *Charter* remedy, it also considered whether he was entitled to a remedy under administrative law principles. The Court noted that delay on its own will almost never constitute an abuse of process warranting a stay of proceedings. The Court concluded that although the delay was lengthy in this case, it was not such that the essential elements of fairness would be necessarily lacking; in this case, there was simply not sufficient proof of prejudice to impact on the fairness of the hearing. Delay, in order to amount to abuse of process, would have to directly cause significant psychological harm to the person, or have attached a stigma to a person's reputation such that the entire human rights system would be brought into disrepute. The Court noted that few lengthy delays would meet this standard. In the instant case, other than an inexplicable five-month period, there had been ongoing communication between the parties. Blencoe had made allegations of bad faith and timeliness, so he himself had created some delays in the proceedings. The Court held that while Blencoe was perfectly entitled to bring forward these complaints of bad faith and timeliness, the Commission ought not to be held responsible for this portion of the delay.

Abuse of Process

The Court denied that there had been an abuse of process in this matter. In order to find an abuse of process, a court must be satisfied that the damage to the fairness of the process were it to go ahead would exceed the damage to the interest in enforcement should the proceeding be halted. The Court applied the same reasoning as had been considered in the *Charter* argument and concluded that there must be more than merely a lengthy delay in order to constitute an abuse of process; the delay must have caused actual prejudice of such magnitude that the public's sense of fairness is affected. Ultimately, while the delay caused by the Commission was a contributory cause of Blencoe's prejudice, the prejudice did not arise directly from the delay.

Dissent

The dissent, written by Mr. Justice LeBel and supported by another three Justices, largely agreed with the reasoning of the majority in this case. However, the dissent felt that the specific and unexplained delays in this matter entitled Blencoe to some kind of remedy. The dissent felt that while a stay of proceedings would have been excessive and unfair, an expedited hearing would have been an appropriate remedy in the circumstances of this case.