
THEME 7

POLITICAL PARTIES

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

BETWEEN

CHARLES CAVILLA

Applicant

– and –

THE CHIEF ELECTORAL OFFICER OF CANADA

Respondent

Elections – Change of Party Leadership – Registration of new Party Leader – Right of Chief Electoral Officer to register new leader.

Background facts

A dispute about this leadership for the Christian Heritage Party arose. A new leader was apparently elected at a valid party meeting. The applicant questioned the right of the Chief Electoral Officer to register his purported successor or replacement as party leader.

Held

The Chief Electoral Officer had not committed an error in law in allowing the registry to record a change in the leadership of the Christian Heritage Party based on a report submitted by the new leader and the accompanying material filed.

Reasons for Judgement Proceedings held before the Honourable Madam Justice J. Simpson., at the Federal Court of Canada, Calgary, Alberta, on the 21st day of September, A.D. 1993.

The Honourable
Madam Justice J. Simpson

Federal Court of Canada

D. C. Cavilla, Esq
(Huckvale & Company)

For the Applicant

G. C. Hawco, Q. C.
(Howard Mackie)

For the Respondent

Sherril R. Knox CSR(A)

Official Court Reporter

THE COURT

I'm going to give you my reasons for the leadership for the Christian Heritage Party. The applicant was the leader of that party, and he may have been replaced in a valid party meeting. Whether or not that is true is the subject of litigation in the Province of British Columbia.

This application arises because the Chief Electoral Officer has registered his purported successor or replacement as the new party leader.

The applicant asked for judicial review and it alleges that the Chief Electoral Officer of Canada, hereafter "the CEO," has erred in law in making the registration by reason of his misinterpretation of Section 26.(1) and (2) of the Canada Elections Act.

The section as amended in June of 1993 reads as follows:

"(1) Where, as a result of a change in the leadership of a registered party or other change, any of the information or material provided by that party to the Chief Electoral Officer pursuant to paragraphs 24(1)(b) to (g) or pursuant to this subsection ceases to be applicable, the registered party shall, within thirty days after the change occurs, send a report in writing, signed by the leader of the party, setting out the details of the change to the Chief Electoral Officer and, on receipt of the report, the Chief Electoral Officer may vary the registry referred to in subsection 24(1) in accordance with the information contained in the report.

(2) Where a change referred to in subsection (1) is a change to the leadership of the party, the report required by that subsection must be accompanied by a copy of resolution of an official meeting of the party appointing the new leader, certified by the new leader and by another officer of the party."

The change of relevance today is that sub-section (2) is a new provision. The application notes that the term "new" is used to describe the noun "leader" in sub-section (2) and the adjective "new" is not found before the word "leader" in sub-section (1).

He urges the application of one of the normal rules of statutory interpretation to this situation and suggests that if different words are used, parliament must have intended different meanings. In this case, if sub-section (2) deals with the new leader, he argues that sub-section (1) must concern the former or old leader.

He, therefore, argues that the section requires that after a leadership change, the CEO cannot vary the register to reflect the new leader's selection without a report signed by the former or old party leader.

It is my opinion that the normal rule of statutory interpretation described above cannot be applied to override the clear meaning of the section. Section 26(1) contemplates that the report is to be filed as a result of a leadership change. Accordingly, at the time of the report, the only leader is the new leader. It is also unreasonable to read the section to require a former leader to perform administrative tasks in his former capacity up to 30 days after the termination of his position.

To read Section 26.(1) as requiring an old leader to sign a report would be contrary to the language of the section and contrary to sensible administrative practice.

It is worth noting that the affidavit of Mr Slattery filed in this proceeding on behalf of the respondent and sworn on September 9th, 1993, notes in paragraph 23 that when the applicant assumed leadership of the Christian Heritage Party, he signed a report in his capacity as the new leader under Section 26.(1) of the Canada Elections Act which was substantially the same prior to the amendments.

The Chief Electoral Officer has not committed an error in law in my opinion in bearing the registry to record a change in the leadership of the Christian Heritage Party based on a report submitted by the new leader pursuant to paragraph 26.(1) of the Elections Act and accompanying material filed under paragraph 26.(2).

The application is, therefore, dismissed.

Are there any submissions as to costs?

MR HAWCO: With respect, My Lady, without pouring salt on the wounds, I think it's an appropriate application to make at this time. We would ask for costs in this cause. Thank you.

MR CAVILLA: My Lady, the applicant would rely on rule 16.18. Costs are generally not paid on judicial review applications unless there is a special reason shown. I would respectfully submit that there was merit to the position by the applicant. It's not a frivolous or vexatious application in my respectful submission, and there is not special reason for the Court to go outside the provision of Rule 16.18 and award costs in this case.

THE COURT: Any reply?

MR HAWCO: No, thank you, My Lady.

THE COURT: If not having been argued that there are special reasons in this case for costs awarded, there will be none.

MR CAVILLA: Thank you, My Lady.

PROCEEDINGS CONCLUDED.

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 1 and 6 are a true and faithful transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this **6th** day of **October**, A.D 1993.

Sherril R. Knox, CSR(A)
Official Court Reporter

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