

Paying Dues to a Union that Supports Specific Social Viewpoints

A Federal Court judgment, released on March 30, 2007, has intensified the debate between minority rights and individual beliefs, labour groups and political lobbyists.

1. [Comstock v. Public Service Alliance of Canada](#) [1], the petitioner, Susan Comstock, requested a judicial review of a Canadian Human Rights Commission (CHRC) decision [2]. The CHRC had held that the policy of the [Public Service Alliance of Canada](#) (PSAC), which supports same-sex marriage, did not discriminate against Comstock on the basis of religion. Comstock is a long-standing member of the federal public service as well as a devout Catholic. She argued that PSAC policy was discriminatory because it wrongly characterized her beliefs as “if not homophobic, at least heterosexist,” and made her a moral and social pariah in the union [3].

The Federal Court upheld the CHRC’s ruling that the PSAC policy did not violate Comstock’s freedom of religion; the policy did not force her to act contrary to her beliefs or conscience. The Court held that there were other avenues of expression open to the petitioner such as expressing an opinion, refusing to be a union member, or debating the issue in a democratic fashion [4].

Comstock also launched a complaint against the Treasury Board of Canada, arguing, pursuant to section 11.04 of the collective agreement between the PSAC and the Treasury Board, that her union dues should be re-routed to the Roman Catholic Church of Canada.

Regarding this complaint, the Federal Court again upheld the CHRC’s ruling by finding that section 11.04 did not apply. Section 11.04 requires that the religious organization to which the employee belongs doctrinally prevents them from making financial contributions to an employee organization [5]. The Court found that section 11.04 did not apply because:

the Roman Catholic Church does not have a doctrine that prevents its members as a matter of conscience from making financial contributions to employee organizations and that the teachings of the Roman Catholic Church support the right of workers to join together in associations to promote human rights and to further other interests in the common good...the Roman Catholic Church has a long history in Canada of supporting working people in their struggle to promote and safe-guard their rights. [6]

In addition to the above complaints, Comstock also argued that forcing her to pay union dues to the PSAC violated her [Charter](#) rights under sections 2(a), 2(d), 7 and 15(1). The Federal Court did not consider the Charter arguments for jurisdictional reasons (“a court will only intervene when an unreasonable decision is made” [7]) and procedural reasons (new legal issues cannot be raised in the context of a judicial review [8]). Moreover, the Court held that an entirely different legal question would have to be asked for a Charter challenge to proceed against the Treasury Board. The petitioner would have to request the CHRC to consider whether section 11.04 violated her Charter rights (a claim that Comstock could only have made against her employer, a federal government entity that is subject to the provisions of the Charter) [9].

Comstock v. Public Service Alliance of Canada establishes “that an individual’s right to practice their religion is not impaired by paying dues to a union whose views they do not share” [10]. Susan Comstock is planning to appeal the decision.

Cases

- Comstock v. Public Service Alliance of Canada, <http://www.canlii.org/en/ca/fct/doc/2007/2007fc335/2007fc335.html>

Further Reading

- “PSAC’s voice needed,” Letter to the Editor, Ottawa Citizen (5 April 2007) A15.
- “PSAC goes too far,” Editorial, Ottawa Citizen (3 April 2007) A14.

[1] Comstock v. Public Service Alliance of Canada, 2007 FC 1135 (CanLII) [Comstock]. [2] The CHRC screens complaints to determine whether they warrant an inquiry at the Human Rights Tribunal. The CHRC does not have the jurisdiction to address general questions of law.

[3] Comstock, supra, note 1 at 8.

[4] Comstock, supra, note 1 at 15.

[5] Comstock, supra, note 1 at 9.

[6] Comstock, supra, note 1 at 10.

[7] Comstock, supra, note 1 at 33.

[8] Comstock, supra, note 1 at 56.

[9] Comstock, supra, note 1 at 59.

[10] “Same-sex marriage opponent loses fight to redirect dues; Union’s support for gays not linked to her freedom of religion” The Edmonton Journal (31 March 2007) A5.