

Longley v. Canada: Thresholds, Public Funding of Political Parties, and the Charter

[Longley v. Canada \(Attorney General\) \[Longley\]](#), the Ontario Court of Appeal (Ont. CA), recently ruled that provisions of Canada Elections Act [the CEA], which set minimum election performance thresholds before a political party can qualify for public funding, do not violate the Charter of Rights and Freedoms (the Charter).[i] The Court of Appeal decision reversed the initial Superior Court ruling, which concluded that the provisions restricted the applicants' meaningful participation in the democratic process, violating s.3 of the Charter, and unduly discriminated against small political parties, contrary to s.15 of the Charter.

Section 3 Argument

Section 3 of the Charter states that “[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein”.[iii] In [Figueroa v. Canada](#), the Supreme Court of Canada (SCC) concluded that section 3 protects more than the mere right to vote and effective representation in Parliament and the legislatures.[iv] Rather, it guarantees “the right of each citizen to meaningful participation in the electoral process”.[v]

In order to determine whether the funding thresholds imposed by s.435.01(1) violated s.3 of the Charter, the court, in Longley, was faced with the same two questions addressed by the SCC in Figueroa.[vi] First, do members and supporters of political parties play a meaningful role in the electoral process? Second, if so, do the funding thresholds interfere with the ability to play that meaningful role?

On the first question, the Ont. CA concluded that political parties are a central feature of political life and the electoral process in Canada.[vii] On the second, the court recognized that funding and resources are essential to the ability of political parties and supporters to communicate their message to the public. Consequently, the court concluded that the funding thresholds “enhance the imbalance on an already tilted playing field as between larger and smaller parties” and, in turn, impair the right of small parties, and their members and supporters, to meaningfully participate in the electoral process.[viii] As a result, the court ruled s.435.01(1) of the CEA violated s.3 of the Charter.

In determining that s.1 of the Charter saved the s.3 violation, the Ont. CA observed that the thresholds were imposed following the 1993 federal election. In the 1993 election, the Natural Law Party received approximately 85,000 votes and, as a result, received over \$700,000 in public funds.[ix] However, there was a widespread public belief that the party did not participate in the election for political purposes. Rather, many believed its purpose

was advertisement of its meditation courses and promotion of commercial aims.[x]

According to the Ont. CA, the objective of the funding thresholds, to preserve the integrity of electoral process by protecting the public funding scheme from abuse or misuse, was sufficiently pressing and substantial to justify overriding a charter right.[xi] Additionally, the court found that imposing funding thresholds was rationally connected to its objective and infringed s.3 as little as reasonably possible.[xii] Finally, the court concluded that protecting the electoral process outweighed “the value of absolute equality in the treatment of all political parties in terms of access to funding”. [xiii]

In sum, the Ont. CA concluded that the s.435.01(1) funding thresholds violated s.3 of the Charter. However, it further ruled the violation was saved under s.1 as a reasonable limit in a free and democratic society.[xiv]

Section 15 Argument

Section 15 of the Charter states: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”. In the judgement of the Ontario Superior Court, s.435.01(1) of the CEAdiscriminated against weaker political parties in comparison to major political parties, contrary to s.15.[xv] The Ont. CA disagreed.

The Ont. CA concluded that s.435.01(1) did not violate s.15 of the Charter.[xvi] First, the court concluded that since political parties are not individuals, s.15 does not apply to them.[xvii] Second, to the extent that s.15 applies to individual members and supporters of smaller political parties, it is not invoked by the s.435.01(1) funding thresholds.[xviii] More specifically, s.15 protection is triggered only when the alleged discrimination is based on individual personal characteristics. However, the differential treatment, legislated by s.435.01(1), is based solely on the number of votes a party obtains in a general election. Furthermore, the court noted that the number of votes a party receives has little to do with the personal political beliefs or affiliations of the individual supporters or members.[xix] Consequently, the court concluded that the vote based thresholds, contained in s.435.01(1) do not discriminate based on individual personal characteristics and, as a result, s.15 did not apply.

Section 2(b) and 2(d) Argument

The applicants further argued that the funding thresholds impaired their freedom of expression and association, guaranteed by sections 2(b) and 2(d) of the Charter. The Court of Appeal noted that freedom of expression, protected by s.2(b) of the Charter, is infringed only when there is a substantial interference with the freedom of expression.[xx] Furthermore, the court observed that diminished effectiveness in the ability to convey a message is not substantial interference. As a result, the court concluded that the funding thresholds did not “lead to any substantial interference with the ability of members or supporters of political parties to exercise their freedom of expression”. [xxi]

Finally, given that the court could find no indication that the funding thresholds interfered with the ability of anyone to associate or pursue collective goals, it ruled that s.435.01(1) of the CEA did not interfere with the freedom of association

[i] 2007 ONCA 852 (Canlii) [Longley].

[ii] Canada Elections Act, S.C. 2000, c. 9, s.435.01(1).

[iii] Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11, s.3 [The Charter].

[iv] 2003 SCC 37, [2003] 1 S.C.R. 912 at paras. 19-25 [Figueroa].

[v] Figueroa. at para. 27.

[vi] Figueroa. at para. 38.

[vii] Longley, at para. 40.

[viii] Longley, at para. 41.

[ix] Longley, at para. 13.

[x] Longley, at para. 13.

[xi] Longley, at paras. 48-49.

[xii] Longley, at paras. 50 and 57.

[xiii] Longley, at para. 83.

[xiv] Longley, at para. 84.

[xv] Longley, at para. 86.

[xvi] Longley, at para. 87.

[xvii] Longley, at para. 95.

[xviii] Longley, at para. 96.

[xix] Longley, at para 98.

[xx] Longley, at para. 109.

[xxi] Longley, at para. 109.