Little Sisters Refused Advance Costs to Battle Canada Customs

For the past 12 years, Little Sisters Book and Art Emporium (Little Sisters) has been in a legal battle with Canada Customs (Customs) over their right to import material for the gay and lesbian community in Vancouver. The battle has brought Little Sisters to the Supreme Court of Canada (SCC) on two separate occasions. The first case, heard in 2000, resulted in the SCC ruling that Customs officials had violated Little Sisters' section 15(1) Charter right to equality and section 2(b) right to freedom of expression. The Court explained that under s. 2(b) of the Charter, importers have a right to receive expressive material unless the government can justify denying it. The Court found that Customs officials had violated the Charter by targeting books and other material bound for the gay and lesbian community and improperly detaining those materials.

After this ruling, Little Sisters continued to have trouble with Customs. Specifically, Customs detained four books imported by Little Sisters and determined them to be obscene. Little Sisters wanted the Customs' decision reversed, but also asked the Court for a general and broad review of all Customs' practices relating to obscenity prohibitions. With this review, Little Sisters hoped to establish that Customs is applying the legislation incorrectly and unconstitutionally.

What brought Little Sisters before the SCC a second time in April 2006 was their lack of funding to carry out this litigation. In their second appearance, Little Sisters asked the Court to order the government to pay their legal costs in advance of the final judgment. This request was granted by the trial court but denied by the B.C. Court of Appeal. The SCC ultimately refused the advance costs request for both the four books issue and the overall review of Customs' practices.

Generally, each party must pay for their own litigation. At the end of certain hearings, a court may order a party to pay for the other's legal costs. It is only a rare and exceptional case that is special enough to justify granting an order for advance costs. To demonstrate this, a litigant must meet three requirements:

1. The party asking for advance costs cannot afford to proceed and no other reasonable alternatives exist.
2. Merit: it is in the interest of justice that the case goes forward?
3. The issues raised go beyond the interest of the individual litigants (e.g. the issues are of public importance, and have not been resolved before).

The issue of merit and public interest were discussed by the Court. The majority were not satisfied that the four books were integral or even important to Little Sister's business operations. They also said that there was not enough evidence to indicate Customs was

performing its task improperly, unconstitutionally, or to show Little Sisters continued to be a victim of unfair targeting. Ultimately, neither the four books issue nor the broad review of Customs practices had sufficient merit to justify an award of advance costs.

With the third requirement, the majority pointed out that this case would only be of public interest if Little Sisters won. If Customs was found to be acting properly, the only party affected would be Little Sisters. For the public interest requirement to be met, the case must be of public importance regardless of the outcome.

The SCC recognised that protecting freedom of expression and ensuring governmental Charter compliance is important. However, not all Charter litigation goes beyond the interests of the individuals involved to the extent that it is of exceptional public importance. In their second trip to the SCC, Little Sisters failed to establish that their problems with Customs were special enough to justify receiving advance costs.

Sources

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Further Reading

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