BC Supreme Court
Samuel Michael Frank v. BC Attorney General
BC Attorney General represented by Joshua Ingram
sitting: Master Peter Keighley
Oct 17, 2014

Keighley:
We've got about 8 minutes that we could use to start this. Do you want to start or is your preference to start at 2:00?

Ingram:
I'm in Your Honour's hands.

Frank:
As well yes, whatever you feel is better.

Keighley:
Well, let's use the eight minutes we've got then. Are you Mr Ingram?

Ingram:
I am. I am counsel for the Attorney General.

Keighley:
Alright Mr Ingram. And Mr Frank.

Frank:
Yes.

Ingram:
And I am the applicant in this application. Mr Frank is the petitioner and the petition he has filed but this is my application.
I have a book of authorities to hand up. It has been provided to Mr Frank.

Keighley:
Okay. Thanks.

Ingram:
Your honour should have an application record with pleadings in a binder, just to make sure we're all on the same page.

Keighley:
Yes.

Ingram:
Now as to the order sought, that the petitioner filed and served on the…

[notice by **Keighley** to other parties in room of adjournment pending]

Ingram:
To continue, the order sought is that the petition be struck pursuant to rule 9-5(1) and costs of this application. As to the factual basis, in the application, the petitioner is a member of an organization that promotes an alternative form of voting system and the belief that sovereign individuals may opt out of legislation, as in Meads and Meads, the decision of the Alberta Court of Queen's Bench. It's clarified a number of issues including sovereign citizens in Canada and has a collection of the case law relevant to this action.
Around Feb 3, the petitioner directed correspondence to the Attorney General of BC, advising that being bound to a single final vote in periodic elections breached his rights under section 3 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, and seeking a written "declaration" that it is unlawful for the "laws of Crown legislative assemblies" to be imposed on him until his preferred method of voting is utilized.
Now as I understand it, that's a form of voting in which votes may be changed at any time, and that letter is in the affidavit which is also included in the application record.
In response, the Acting Assistant Deputy Attorney General advised the petitioner by letter dated February 14, 2014 that he was subject to the laws of British Columbia and Canada, how to serve another party if he chose to commence legal proceedings, and how to obtain legal advice it is was required.
The petitioner now seeks an order pursuant to sections 2 (a), (b), (d), and 3 of the Charter exempting him from any laws imposed on him in British Columbia that were created by a legislative assembly that does not practice his preferred method of voting.
The petitioner appears to submit that periodic elections specified in the Canada Elections Act, Constitution Act, 1982, being Schedule B to the Canada Act 1982, and the Vancouver Charter are not consistent with his preferred method of voting, and infringe his section 2 (a), (b), (d) and 3 Charter rights.

Keighley:
When I was looking through the material this morning, I was looking for the petition and I think I found it at tab 9.

Ingram:
That is correct. and the petition response is at tab 10

Keighley:
Okay, and the orders sought are in part 1, on page 3 of the petition.

Ingram:
I'm speaking to the notice of application at tab 1.

Keighley:
No I'm with you there, but in terms of the orders that Mr Frank is seeking…

Ingram:
That's part 1, paragraph 1 of the petition, on page 3 of the petition, "before any individual, officer, or agent may have, or attempt to have, any laws imposed upon the petitioner that are created by a legislative assembly that denies the right to vote in an election of its members for any period of time, one of three conditions must be fulfilled:

1) the individual, officer, or agent must demonstrate to this honourable court why it is justifiable in a free and democratic society for the right to vote in an election of members of a legislative assembly to be denied for any period of time,
2) the individual, officer, or agent must demonstrate to this honourable court that the petitioner has had membership in the Interactive Sovereign Society terminated, either by resignation or for failing to adhere to the society's laws, or
3) the individual, officer, or agent must demonstrate to this honourable court that the petitioner has failed to exercise good faith in his allegiance to Her Majesty Elizabeth II, Queen of Canada"

To continue with the legal basis, the petition respondent submits that the petition advances no reasonable cause of action, and that the petition is unnecessary, scandalous, frivolous, or vexatious, and as such, falls within the ambit of Rule 9-5(1)a) or (b).

Rule 9-5(1) provides authority to strike out and dismiss a pleading if:
a. it discloses no reasonable claim;
b. it is unnecessary, scandalous, frivolous, or vexatious;
c. it is an embarrassment; or
d. it is an abuse of process of the Court.

In Stephen v British Columbia, the test for whether a claim should be struck out is: "assuming that the facts as stated in the statement of claim can be proved, is it 'plain and obvious' that the plaintiff's claim discloses no reasonable cause of action?"

In Stephen, at para. 50, whether a claim is unnecessary or vexatious is: "if it does not go to establishing the plaintiff's cause of action or does not advance any claim known in law".

Further, it is plain and obvious that a redrafted pleading is bound to fail because it does not raise an arguable issue, an opportunity to redraft will not be granted: Strata Plan LMS3259 v Sze Hang Holding Inc.

In this respect, the first category that I would go to is no breach of Charter rights.

The petitioner seeks a declaration that otherwise valid and applicable encasements of Canada, British Columbia, and Vancouver are constitutionally inapplicable to him because:
a. election of legislative assemblies from time to time on dates prescribed by law, with no means to require elections to be held in the meantime, infringes the petitioner's right to vote under Charter section 3;
b. the imposition of election dates and electoral terms infringes the petitioner's freedom of conscience under Charter section 2(a);
c. election of a member of Parliament or a legislative assembly for electoral terms infringes the petitioner's freedoms of association under Charter section 2(d); and
d. denial during election terms of the ability to vote infringes the petitioner's freedoms of expression under Charter section 2(b).

The Charter provides in material part as follows:
2. Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) […]; and
(d) freedom of association.
3. Every 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.
4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

The various provisions of the Constitution are intended to be read together harmoniously, as can be seen in Regina v. Crawford.

[lunch]

Paragraph 33 of R v. Crawford, under the heading resolving competing Charter rights, begins "the proper approach to the problem created by a conflict in the protected rights of individuals was outlined by the Chief Justice in Dagenais, supra. After stressing that Charter rights are of equal value, he continued as follows, at p. 877:

> When the protected rights of two individuals come into conflict, as can occur in the case of publication bans, Charter principles require a balance to be achieved that fully respects the important of both sets of rights.

"I have gone to some length to stress that Charter rights are not absolute in the sense that they cannot be applied to their full extent regardless of the context. Application of Charter values must take into account other interests and in particular other Charter values which may conflict with their unrestricted and literal enforcement. This approach to Charter values which may conflict with their unrestricted and literal enforcement. This approach to Charter values is especially apt in this case in that the conflicting rights are protected under the same section of the Charter." This was referring to the rights of the co-accused under section 7.

Charter section 4(1) therefore provides, by necessary implication, a complete answer to the petitioner's arguments of infringement of his rights and freedoms under Charter sections 2 and 3. The Constitution would not have stipulated a maximum period of time between elections if any shorter time period prima facie infringed a person's right to vote or freedom of conscience, association, or expression.
Moreover, the petitioner has not asserted any facts which, if true, could constitute a violation of his Charter rights or freedoms. The absence of a factual foundation is fatal to this petition.
Allart v Alec's Automotive Machine Shop: "The court cannot address a constitutional challenge in a vacuum… …A factual foundation is of fundamental importance on this appeal. It is not the purpose of the legislation which is said to infringe the Charter but its effect. If the deleterious effects are not established there can be no Charter violation and no case has been made out. Thus the absence of a factual base is not just a technicality that could not be overlooked, but rather it is a flaw that is fatal to the appellants' position."

The petitioner seeks relief beyond that which this Court may grant in the scope of judicial review, as in the Judicial Review Procedure Act. The correct manner of proceeding on a constitutional challenge of this sort would be either in defence to the enforcement of an enactment which the petitioner says is constitutionally inapplicable to him, or by notice of civil claim.

Section 2 has the powers of the court on judicial review. The Judicial Review Procedure Act is at tab 1 of the authorities. Section 2 provides that the court may order mandamus, prohibition or certiorari, or a declaration or injunction in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statuary power. There's been no statutory power of position that's been exercised here. The correct manner of proceeding on a constitutional challenge of this sort would either be in defence to the enforcement of an enactment which the petitioner says is constitutionally inapplicable to him or by notice of civl claim. My submission of a personal remedy would have no practical effect; it is not suited to be a declaration without a basis of admissible evidence. Regarding the notice of civil claim, usually a constitutional question is begun when a statue is challenged using the Constitutional Question Act. A notice of constitutional question is served under the Act and then a notice of civil claim which will allow a trial with experts and evidence and other parties. Something of this scope proceeding by petition doesn't allow for evidence beyond affidavit.

The petition and affidavit in support bear the hallmarks of "Organized Pseudolegal Commercial Argument" ("OPCA") litigants categorized in Meads, at paragraphs 317-319 as "sovereign citizens[s]" who take the position that one may simply declare him or herself immune from state or court authority. Rooke A.C.J. held in Meads at paragraphs 587 and 597 that an appropriate response to such OPCA strategies is striking the pleadings, and costs.

The petition seeks an order that the petitioner be free from all laws of legislative assemblies that don't practice his form of voting and of course no legislative assembly does. The affidavit of Richard Durie contains the ISS Constitution, where it says that "the People of the Interactive Sovereign Society are individually responsible, and are thus not responsible to laws which are not of their own making".

The affidavit of Mr Frank states that he rescinded his allegiance to the Queen in writing and he has since been subject to the laws of his organization and that he filed materials in the Federal Court Registry as a sovereign individual with a name to be spelled with a dash and colon, also addressed in the Meads decision as representative of the sovereign citizen movement.

The Meads decision has since been followed extensively across Canada, and relied on in this Court in a handful of instances, including:

a. College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia v. Fischer, at paragraph 13, in which Gray J. held that the various tactics employed to deny the authority of the court were "nonsense"; and,
b. Yankson v. Canada (Attorney General), in which Savage J. held that Mr. Yankson's application be struck pursuant to Rule 9-5(1)(a), and that he be declared a vexatious litigant.

The petition respondent submits that the petitioner is not entitled to any relief, and that the petition should be dismissed pursuant to Rule 9-5(1)(a) or (b).

Rule 9-5(1) provides that costs may be ordered as special costs in the case of a successful application to strike a petition.

The petition respondent seeks an order for costs on a lump-sum basis in an amount that the Court considers appropriate.

Those are my submissions subject to any questions here.

Keighley:
Alright thank you. Yes, Mr Frank.

Frank:
Thank you.

Your honour I'd like to start out by stating that I believe that in the written statement I've already responded with that I've already properly refuted all of the reasons for the dismissal of this petition and I'm willing to summarize them verbally here and also respond to some of the verbal points made by the applicant. I'm requesting that if after my presentation any of the reasons do not appear properly refuted that I can have the opportunity to elaborate on my reasons for refuting further.

To start with, the claim that this petition has any resemblance at all to an OPCA litigation, from the second point in my response to the application, where the respondent has claimed that I as a member of the Interactive Sovereign Society have a belief that individuals may opt out of legislation. I'd just like to elaborate on that. My personal understanding of the definition of sovereignty is the intent and ability to completely and concisely define not necessarily just the laws to which one is willing to be held responsible but also the method by which those laws are made. I regard responsible sovereignty as where the methods by which other people can have a say in how one's laws are made are clearly stated, and also that the method by which those laws are judicially scrutinized provides other people a say as well, and that's also clearly stated. If those things aren't present I don't see it as responsible sovereignty. That means legislature and judiciary. As far as I'm concerned any alleged sovereign that does not have a legislature and judiciary that any other person has the opportunity to participate in, is not practicing responsible sovereignty. Based on that definition of sovereignty, I don't believe I qualify under the category of any other litigant that I've seen represented in any of the cases that I've read in this citation.

Furthermore, I have not claimed to wish to opt out of legislation. I've only claimed that I wish the rights that I am guaranteed by the Canadian Charter of Rights and Freedoms to be upheld. I'm fully willing to see an alternate remedy chosen than the one that I've asked for, if one can be found. That was my suggestion because it certainly resolves the issue to my satisfaction.

A further clarification that I have to make is that point number 3 in the remedy is that I am required to continue to exercise good faith in my allegiance to the Queen. Otherwise this remedy is stricken. I believe that allegiance to the Queen involves recognizing the Canadian Charter as being laws that I remain subject to. As the courts of the Interactive Sovereign Society are fully empowered to scrutinize my conduct when anyone objects to it, because of my allegiance to the Queen and section 24 of the Charter stating that any court of competent jurisdiction can be applied if any subject of the Queen's conduct goes against that Charter, I regard the BC Supreme Court as an appellate court from the ISS court.

Keighley:
Mr Frank, let me see if I can help focus your submissions a little here. This is an application to dismiss the claims set out in your petition dated Sept 17, 2014 as inauralia, disclosing no reasonable cause of action. Now that's the one I'm focussed on. There are a number of other bases on which the respondent seeks to set aside your petition, but I'm focussed on that. Does

your petition set out any cause of action known to the law, and in that sense, reasonable. Now there are a number of affidavits that you filed in support of your petition that the action is maintainable. I can't consider those. Rule 9-5 says "at any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition, or other document on the ground that it discloses no reasonable claim of defence as the case may be" and that's the one we're focussed on here, and also goes on to provide that if it's unnecessary, scandalous, frivolous, vexatious, may prejudice embarrass a fair trial or otherwise is an abuse of the court. I don't think we need to get into that. I'm focussed as I said on whether your pleading discloses a reasonable claim. Now Rule 9-5(2) says "no evidence is admissible on an application under (1)a". So I can't consider any evidence. I've got to look at the pleading itself that is your petition and determine whether on the face of it it sets out any reasonable claim, i.e. a claim known to the law. In terms of the test I am to apply, it's been variously stated but I think a common one, often referred to in cases, is that a claim should be struck out if it discloses no reasonable cause of action in that it is plain and obvious that the claim could not succeed. That's the test. Plain and obvious that your claim could not succeed, that's the test I am to apply. Without considering any evidence, just looking at the words themselves, that's what we need to focus on.

Now, looking at your petition, what I'm focussing on then is under the heading Claim of Petitioner part 1 order sought, you've got paragraph 1 and then 3 paragraphs 1, 2, and 3 under it. So that's what I have to look at to see if you've disclosed any claim known tot he law, nothing else. So can we focus on that?

I should tell you one more thing. The purpose of pleading is fundamental in our system. The pleading whether it's in a notice of civil claim or a notice of family claim or a petition as it is here is designed to give the other party a clear indication of the nature of the claim being brought against them and the legal basis for that claim. So in a motor vehicle claim, the pleading has to without stating evidence make it clear to the person who receives the document that that action involves a claim for a certain type of compensation or certain claims arising out of the motor vehicle act which occurred in a certain place on a certain date. So the person can look at it and say well I dispute my liability for that accident but at least I understand the basis of the claim that's being made against me. That's the purpose of pleading, to give the party that receives it a clear indication of what the claim is that is brought against them.

So what I need to hear from you is what the precise claim is and why this claim is sustainable at law.

Frank:
The precise claim, your honour, is based on the four sections that are cited here, 2a, 2b, 2d, and 3 of the Charter. First of all in section 3, it is stated that every citizen of Canada has the right to vote in an election of members of a legislative assembly. It is clear that there is no means to exercise that right today in any of the legislative assemblies cited in the petition in the Canada Elections Act, the Elections Act of BC or the Vancouver Charter. So a right that is guaranteed under the law in the Canadian Charter, there is no means to exercise it today, thus it is denied today. There is one date on which it is provided to be exercised and then a period of time passes through which it is not available to be exercised. I am disputing that this is reasonable or demonstrably justifiable in a free and democratic society. That's my first claim.

Keighley:
Well I could say then if I'm driving down the highway and I get stopped by a police officer speeding I could say well I don't agree that the speed limit that has been established for this stretch of highway is fair and that regulation as pursuant to the provincial motor vehicle act is beyond the power of the provincial legislature because it unfairly inhibits my freedom to drive down this road as fast as I want. Isn't that the same argument?

Frank:
With respect, I feel that the difference between those two arguments is that there is demonstrable justification for providing for the public safety a measure of restraint in performing things that might present danger to others.

Keighley:
So our elections act sets out a code of conduct if you will for conduct of elections to ensure that elections are carried on in a manner consistent with our democratic process. Isn't that the equivalent of ensuring that people are reasonably safe in the use of the highways?

Frank:
Absolutely. I agree that the purpose of elections is so that legislation such as a motor vehicle act can be passed in a way that to some extent is consistent with what the people want. But for an individual to have a demonstrable part in perhaps amendments to the motor vehicle act or perhaps amendments to the family act, that kind of thing, during the period where an election is offered, the candidates don't speak on that particular element at all because they don't have time, there's only one month to speak, so someone is required to vote based on all the other issues they've heard spoken about and if they ask a question about that one the candidate can just say no comment. So someone is under duress to put a vote down for a candidate that to them feels like a second best choice or feels like a manner of settling, rather than saying, why can I not be patient to wait until I've had my question answered about the issue that's important to me because I have a very important issue about the motor vehicle act. I feel it's too dangerous, people are threatened, we need to increase the restraint on these things. Why can they not wait until they hear back on their specific issue?

When I say demonstrable justification, if an individual is told they have a decision to make that's very important, it can change things like how dangerous it is to walk on the street, and you have to do it by next Thursday and if you don't do it then you don't get to do it at all for four years. We're supposed to take pride in our vote and believe that that's a reason to love our nation.

Keighley:
You know, there is a difference between this situation and my example about speeding. It occurred to me from the outset that I don't think it changes the result but we're not dealing with a situation where you've been stopped by a policeman and you're saying I'm entitled to go however fast I want. The equivalent to your application here is that you're saying in the abstract that the laws in this province with respect to speeding unfairly limit my freedom.

Frank:
I don't personally believe the laws with respect to speeding…

Keighley:
No but that's the parallel argument. What Mr Ingram said, the Charter isn't challenged in the abstract. The Charter is challenged in relation to specific charges that are brought against you, for example, under say the income tax act or the criminal code or motor vehicle act where you raise that charter issue as a defence. Why should this court consider a proceeding brought by you to challenge federal legislation or provincial legislation in the abstract? That's why we have a Parliament and that's why we have Provincial Legislatures, to make laws on our behalves.

Frank:
After several years of very hard work I have found that the propensity for people to understand the indignity suffered by a voter being presented with a periodic deadline that they've grown up in to the extent that they're not even aware that it's an indignity. They're not willing to consider that there would be any improvement to a sense of personal pride of a citizen or a feeling of belonging and feeling of being enfranchised by providing true democratic enfranchisement. Because it is an impossible task as far as I can tell to bring this to people's awareness, it can't be achieved through the political realm. It can't be achieved through a political party making it a platform. It does state in the Charter that this right is guaranteed. I'm asking for my personal rights to be protected because I don't think anyone else will work to protect my rights in this regard so I'm asking this court to protect them.

The statement made by the petitioner here is that sections 3 and 4 are intended to work together harmoniously and I respect that. I respect the harmoniousness of the Constitution. I believe in it. But the important thing that I observe is that paragraph 4 doesn't explicitly state that section 3 rights can be denied for up to five years. That's not how it's worded. Maybe it was intended to imply that, I don't know. To me, I see it saying, as the applicant noted earlier, there has never been the use of an interactive electoral system in history to anyone's knowledge, so the actual facilitation of such a system, the actual conservation of resources by such a system? As a side note, I've made a calculation, if an interactive electoral system to choose the Legislature of BC, the costs in terms of the number of people employed to facilitate that electoral system would be approximately half of what it presently is. I'd be willing to back those numbers up, except for that the demonstrable justification onus is on the person who's asking that right to be denied for periods of time.

Keighley:
Those might be very interesting submissions to make to a government committee, considering changes to the elections act, but why should a court get involved in making those decisions?

Frank:
It's my belief, based on a great deal effort, that no government committee would consider these submissions.

Keighley:
Then why should the court?

Frank:
Because the court is here to uphold the Charter, according to section 24 of the Charter. So if the rights in that Charter are being denied, then it is within this court's jurisdiction to seek a remedy.

Keighley:
But of course the Charter doesn't guarantee every right you think you have.

Frank:
It guarantees them with reasonable limits subject to demonstrable justification.

Keighley:
The basic philosophy of a developed society (question of how to define that, but) is one where people give up certain rights and freedoms for the general good. In other words, so that they come under the umbrella of a government which benevolently looks after their safety. So we have police forces instead of vigilanteism. We have armies instead of bands of brigands. We give up a certain amount of freedom in the interest of having a control for the general good. The Charter of Rights and Freedoms is designed to make sure that legislation doesn't unreasonably infringe the rights of individuals, not that it doesn't infringe the rights of individuals because we accept that. The purpose of the Charter is to make sure that those infringements on individual rights are justified. Now tell me, again focussing on this part of your petition, why your claim has any chance of success.

Frank:
Another citation that the applicant referenced in the notice of application was the Supreme Court of Canada reference on the secession of Quebec. One of the statements made by the SCC in that same document was that "the Canadian tradition is one of evolutionary democracy moving in uneven steps toward the goal of universal suffrage and more effective representation". I feel that since the Charter rights that I am protesting being denied for periods of time may well provide more effective representation to the voters if those rights were respected at all times instead of only periodically, then consistent with the SCC ruling in that matter, we are as citizens entitled to seek the means to exercise that right. Since that right is a Charter right that is being denied for periods of time, it therefore does fall within court jurisdiction to work to create some form of remedy so that those rights stop being denied, since they are Charter rights.

If we could move away from section 3 for a moment and look at section 2a freedom of conscience, because I also feel that that is another freedom being infringed. The respondent has stated that section 4 necessarily implies that any shorter time period than 5 years between periodic elections doesn't infringe a person's freedom of conscience.

Keighley:
Let me just stop you there for a minute. I said that I couldn't consider any evidence. I also can't consider what you believe to be the case, because that's not evidence and it's not a substitute for evidence. I have to decide on the basis of that paragraph in part 1 of your petition whether your claim is sustainable or not, and I can't consider any evidence or opinion of others in determining whether that's the case or not. If you've got something to say about why that claim is sustainable this is your opportunity to tell me, but I can't consider evidence or your opinion.

A person reading a document has to know what you're asking for and why you're entitled to it. I don't see that.

Frank:
And the cessation of the denial of section 3 voting rights is not evident in this?

Keighley:
No. I know it's apparently an issue for you, but I don't see from your pleading why the court should be engaged in trying to resolve it.

Frank:
Is it possible to ask for an adjournment on this matter so I can consider this a little more in depth before a decision reached, your honour?

Keighley:
Well no, I think we need to deal with it today. There's nothing to prevent you from trying again until this court indicates that you can't try anymore. If the court considers that you've serially brought actions which are unsustainable an order can be made under provisions of the Supreme Court Act to prevent you from bringing specific further claims. I'm not going to make that today. I'm not aware of any pattern on your behalf in doing that but I"m gonna deal with this one today, and if you feel that your claim is nonetheless sustainable well I suppose until the court orders otherwise you can try again, but I suggest that you would speak to a lawyer before trying again.

Frank:
And if the petition is dismissed with this application, then filing this same petition again with revised grounds would be accepted?

Keighley:
I'm not going to tell you how to do it right. That's for you and a lawyer to figure out, but you haven't done it right this time. I cant' give you legal advice.

The possible consequences that it starts getting expensive for you because without legal representation start claims which are found to be unsustainable and have costs awarded against you time after time, it seems to me the more sensible approach is to deal with the front end of the issue, go and talk to a lawyer, find out from the lawyer whether the claims that you want to bring are sustainable, and if so how it should be done. I'm not trying to drum up business for the legal profession, I'm just trying to make it more cost effective for you.

Frank:
So to get back to the question that you just asked so that I can re-frame my answer one more time, how is the order sought sustainable, yes? Is that the question?

Keighley:
I said before the test I have to apply is essentially considering whether your claim has any chance of success.

Frank:
Is it not the case that according to sec24 of the Charter that if rights are being denied in the Charter that one is entitled to be heard as to the denial of those rights even if the order they're asking is not necessarily deemed appropriate and just by the court? It does say in s24 that a remedy that is deemed appropriate and just by the court may be ordered. Therefore if the remedy asked by the victim who is denied the rights in the Charter is not an appropriate or just remedy is it not within the court's realm to suggest a remedy that would be appropriate and just?

Keighley:
If the court's prepared to move into that realm, it then has to consider whether your claims are frivolous, vexatious, scandalous, or an abuse of process. Then the court is going to get into a consideration of whether claims should be considered in the abstract. Should the court, which is an expensive operation to run at this level and the various appellate levels all the way up to the Supreme Court of Canada, get engaged in deciding issues in the abstract. Should it not, the argument will go, confine itself to situations where an individual's rights are being put into question by a particular operation of the law. In other words, say a charge under the income tax act, a charge under federal drug legislation, a charge under the criminal code or provincial quasi criminal statutes, in those circumstances the court will probably find it far more convincing that Charter issues could be invoked and argued. But if you want to bring a Charter application so to speak in the abstract saying look I'm not being subjected to the sharp end of any particular provincial or federal legislation, I'm not being charged with anything, I'm not being prosecuted, I'm not being sued, but I would like to have this issue resolved, I think I have a Charter right which in the abstract is being infringed by the existence of this legislation. That's starting to sound like frivolous, vexatious, scandalous, in the legal sense, an abuse of process of the court. But I don't think we even get to that point today because I'm focussed on whether your petition discloses a reasonable cause of action.

You should talk to a lawyer Mr Frank, sooner rather than later.

Frank:
One item that I haven't addressed yet that I believe is a reasonable cause of action that is asked in the order here is in section of the 3 conditions that must be met by the respondent, "demonstrate to this honourable court… …any period of time", directly from sections 1 and 3 of the Charter, I believe that it is incumbent upon the applicant in this matter to provide that demonstrable justification since that right is being denied. I feel that that is a reasonable cause of action.

Keighley:
Why is the Attorney General of the Province responsible for that? That's who you're suing.

Frank:
The Attorney General responds on behalf of the Province as representative of Her Majesty in right of British Columbia. So if rights and freedoms are being denied as guaranteed under the Charter then it is the responsibility of the AG in law in court to respond on behalf of the Crown as to why those rights and freedoms are denied and infringed?

Keighley:
Not Her Majesty the Queen in right of the Province of British Columbia?

Frank:
I'm sorry i can't cite the appropriate legislation right now but my understanding is that th AG is empowered to act on behalf of Her Majesty in right of British Columbia?

Keighley:
In certain respects, but in this respect?

Frank:
I believe so. There again, I would like to call for an adjournment because that is a matter that I would like to look into because I'm fairly certain I've read the legislation by which the Attorney General is designated to act on behalf of the Province in terms of Charter matters but I would be happy to revise the petition so that Her Majesty in right of BC was designated as the respondent if that appeared more appropriate.

Keighley:
That might be what you want to talk to a lawyer about. Just because an individual is named as someone who is the Queen's legal representative for the purpose of bringing and defending proceedings doesn't mean that person is responsible as a party for the resolution of issues that you're concerned with. For example if you were claiming damages against the government, you don't get to recover them by suing the Attorney General. So I think you need to talk to a lawyer about that issue. Just because the AG is the legal representative of the Crown doesn't mean they're responsible for the activities of the Crown.

Frank:
If I recall it was the Crown Liability and Proceedings Act in which the AG is named as being designated to act on behalf of the state in Charter matters.

Keighley:
I don't take an issue with that. What I'm saying is that just because of that doesn't mean that the AG becomes responsible as a litigant. That's what you're purporting to do here. That's not the only problem I see with your position Mr Frank, but that's another one.

Frank:
Petitioner rests.

Ingram:
I would like to simply note that we don't get a s1 justification without evidence of a breach. Earlier on the petitioner noted that there was reference to his beliefs. It was just a reference to what his society that he is a member of promotes and that the order sought seems to seek a grant of what would essentially amount to sovereignty. That leads me to reference Meads. Freedom from all laws, that sort of thing, yes I'm not purporting to say what the petitioner believes, just what the society represents.

Keighley:
This is an application by the Attorney General… [continued discussion of costs to be charged to the petitioner, resulting in a charge of $1500]