

Summer jobs attestation case suffers setback in court

Seven of the eight groups or businesses challenging last year's pro-abortion Canada Summer Jobs attestation on constitutional grounds received a setback in federal court.

Federal court Judge Kathleen Ring put their requests for a judicial review on hold until that of Toronto Right to Life (TRTL) is heard.

This decision is a win for Canada because it grants the Ministry of Employment's request to hold the other seven requests in abeyance until the TRTL case is decided.

Given that the employment minister has dropped the controversial version of the attestation in the 2019 CSJ guide, the courts may rule the constitutional questions regarding religious freedom, freedom of conscience and freedom of expression are moot.



Gerry Chipecur

However, Gerry Chipecur, who represents Power to Change Ministries, one of the seven groups affected by the decision, points out that even though the government has dropped the controversial attestation, it is still fighting to defend it in the courts.

If the government loses the TRTL case "will they drop the position they've taken?" Chipecur asked. "They haven't so far. We're surprised they haven't since

they acknowledge our position is right by changing the policy. But they continue to defend the policy and the application of the policy.”

Fears have been expressed on social media the Liberal government will bring back the attestation should they win the next federal election in Oct. and apply it to more government policies than the CSJ program.

A loss on the part of TRTL could damage the prospects of the other applicants, which they argued were more straightforward than that of the prolife group, and could be handed more quickly.

“I conclude that it is in the interests of justice to stay the 7 JRs (judicial reviews) pending the disposition of the RTL JR,” Judge Kathleen Ring wrote in a Feb. 22 decision. “The eight applications share significant areas of commonality on the facts and the issues raised.”

“A stay of proceedings is the only means by which a significant waste of judicial resources and the risk of contradictory judgments can be avoided,” she said.

“Although a fairly long delay is requested, I am not satisfied, on the evidence, that there is ongoing harm being suffered by the Applicants that would be unnecessarily prolonged by a stay.”

The judge noted the application for the 2019 program does not contain the same attestation, so the affected groups and organizations would likely be able to apply this year and consequently any damages by a delay are limited.

The judge also required the applicants – Redeemer University College in Ancaster, Ont; Adam House; Power to Change Ministries; Sarnia Concrete Products; The Wood Source Inc.; Edmonton’s Saturn Machine Works; and Lethbridge-based Vantage Trailer Sales – to pay Canada’s court costs.

Chipeur indicated the costs for covering a hearing taking up one morning will not be that large.

TRTL, a pro-life educational group, was the first to ask for a judicial review of the attestation on Jan. 4, 2018, not long after the policy requiring what critics have described as “compelled speech” was made public in late December 2017.

Judge Ring concluded the 2018 CSJ attestation “is undeniably a central feature in all eight applications for a judicial review.”

“I am satisfied, based on my review of eight notices of application, that there is substantial overlap in the factual background relating to the to” the TRTL judicial review and the seven others.

The “applicants all base their applications, in part, on alleged breaches of

sections 2(a) and 2(b) of the Charter and plead administrative law grounds of unreasonableness and ultra vires," Judge Ring said.

"This means that TRTL's application on whether the attestation policy itself is constitutional will come before the court first and then the question of whether the application of the policy was unconstitutional in relation to the other parties will come before the courts subsequently," said Carol Crosson, the lawyer representing TRTL.

"There was always going to be more than one hearing, it was just a matter of process," said Crosson in an e-mail. "The process which has been laid out by the court will help the issue come before the court in an efficient and reasonable manner."

TRTL has two interveners involved since the beginning: Action Canada for Sexual Health and Rights is on the side of the Minister of Employment; and the B.C. Civil Liberties Association on the side of TRTL.

Some have argued having the pro-life group up first may not be great for strategic reasons since the attestation policy seemed to be directed at anti-abortion advocacy.

The new 2019 attestation makes it clear that jobs are ineligible for funding if they "actively work to undermine or restrict a woman's access to sexual and reproductive health services."

"I don't believe in being strategic when it comes to freedom of speech and freedom of religion," said Gerry Chipeur, who said he was speaking on his own and not on behalf of his client.

"If anyone of us is unfree, all of us is unfree. We're under attack here. Everyone's under attack, whether you are for pro-life causes or religious freedom."

Chipeur said he believed the case would always be handled in two hearings.

"Everyone who has a fundamental belief with respect to religion or thought and belief is under attack, so one is not able to be strategic, one is only able to defend. That's what I see everyone at the table doing."

The other judicial review requests from three evangelical Christian organizations and four private businesses have challenged not only the constitutionality of the attestation but also the decisions of the ministry to deny them funding and refuse to make accommodation on the basis of the charter's guarantees of religious freedom, freedom of expression and freedom of conscience. TRTL launched its challenge before any funding decisions were announced.



Albertos Polizogopoulos

Albertos Polizogopoulos, who represents Redeemer University College and the four private businesses, argued in his factum for Redeemer that solving the TRTL case would not settle the issues in the Redeemer case. Chipeur said the same argument could be made for hearing Power to Change's case first.

"Though Redeemer does not seek to stay the RTL JR (nor does Canada), if the Court concludes that it is in the interest of justice to stay an application for judicial review regarding the CSJ program and its compulsory attestation, the only application that could reasonably be stayed would be the RTL one, since the adjudication of Redeemer's JR will resolve all issues within the RTL JR," Polizogopoulos wrote. "The opposite however, is not the case."

He noted TRTL is only arguing against the imposition of the 2018 attestation, while Redeemer is challenging both the attestation and the rejection of its 2018 CSJ application.