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Injunction at the Federal Court: George Galloway Hearing in Toronto

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George Galloway, the controversial British MP scheduled to speak in Canada this week, and parties supporting him, sought an injunction at the Federal Court today.

Although I don't agree with everything Mr. Galloway says, his views as it relates to non-military solutions to problems largely grounded in social and economic conditions, are ones that in my opinion should be heard.

I attended the hearing at the Federal Court today, where a session was conducted via videoconference to Ottawa.

[41] Barbara Jackman, counsel for the Applicant, noted that in her 30 years of immigration practice she had never seen a case like this, or one which so closely resembled the Supreme Court decision in [42] Roncarelli v. Duplessis, [1959] S.C.R. 121, cited by the Applicants in their submissions.

The presiding judge, Justice Luc Martineau, also noted that unless either counsel could indicate otherwise, there was no case law on anything resembling this fact scenario.

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Mr. Galloway received[45] a letter from Robert J. Orr, Immigration Programme Manager at the High Commission of Canada in London, U.K., dated March 20, 2009. The letter stated a preliminary assessment under s. 34 of the [46] Immigration and Refugee Protection Act (IRPA), Mr. Galloway was inadmissible to Canada. It is unusual for someone to receive such a letter before even applying to enter Canada.

Mr. Orr's letter also invited Mr. Galloway to make submissions to him about this preliminary assessment. If no submissions were made, the Canadian Border Services Agency (CBSA) officer would make their final determination at that time, based on the existing preliminary assessment. The letter also indicated that a Temporary Resident Permit (TRP) would likely be unsuccessful.

The Crown's position, based on [47] R. v. Gould, [1987] 1 S.C.R. 499, was that the Applicant's submissions were premature, as a final determination regarding Mr. Galloway's admission had yet to be made by a CBSA officer.

The Applicants responded that the purpose of the justice system was to prevent harm, and not going through with the injuction would effectively prevent Mr. Galloway from speaking in

Canada. Organizers of the events had incurred considerable cost and effort in securing the facilities and organizing the events.

The [48] Crown's cross-motion questioned the standing of the various support groups as co-applicants of Mr. Galloway.

But the Applicants noted in lengthy submissions, invoking several cases including para. 41 of [49] Irwin Toy Ltd.[50] v.[51] Quebec, [1989] 1 S.C.R. 927, indicating that expression has both content and form. They rejected the Crown's submissions that no irrevocable harm had been created because Mr. Galloway could still speak via teleconferece, because the nature of the expression was fundamentally different.

They also pointed to a couple of American cases that discussed the same issue, which although were not binding, did outline an analysis they suggested would be useful. Expression includes not just the person speaking, but also those receiving the expression, and in this case the ability to interact and ask questions would be impaired. Mr.Galloway was not encouraging violence or hatred towards any group or people, according to the Applicants, and his actions were clearly forms of expression intended to convey meaning.

The Applicants also made a number of submissions regarding a reasonable apprehension of bias, based on [52] Baker v. Canada, [1999] 2 S.C.R. 817. Minister [53] Jason Kenney and his spokesperson Alykhan Velshi had both made numerous public statements on the issue ("mouthing off," in the words of the Applicant), indicating that Mr. Galloway would not be allowed into Canada. They noted that these statements, and presumably the letter, were initiated[54] at the request of the [55] Jewish Defence League, an organization considered a terrorist group [56] in the U.S., but not[57] in Canada.

The effect of the Crown's position, according to the Applicants, was that since Mr. Galloway is considered a terrorist, he could be detained according to IRPA while trying to enter Canada – and possibly indefinitely. This was not the time to decide whether the letter constituted a final decision or not, and the court did have the power to provide an injunction under ss. 18.2 and 44 of the [58] Federal Courts Act.

Justice Martineau indicated that all of the Crown's evidence was hearsay, and there was no information before him that would justify inadmissibility under s. 34 of IRPA. He noted that Gould was several years old now, and that injunctions can be used to change law or the status quo. He also rejected several cases offered by the Crown, noting that they were only applicable where an Applicant had made an inquiry into the status of their application. Mr. Galloway did not solicit or request the letter from Mr. Orr.

I do have over 20 pages more of notes, scribbled furiously during a videoconferece with mediocre sound, but this was the highlight reel for me.

The Applicants noted that if Justice Martineau was able to provide a decision by 2 p.m. tomorrow, Mr. Galloway could still potentially make his events. He will be coming from the U.S., where he is not considered a terrorist, and has just concluded a speaking tour in that country.

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