IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Gail Davidson et al v. Attorney General of British Columbia et al,*** 2005 BCSC 1765

Date: 20051219
Docket: 23447
Registry: Vancouver

IN THE MATTER OF THE INFORMATION FILED NOVEMBER 30, 2004,
IN THE PROVINCIAL COURT OF BRITISH COLUMBIA,
VANCOUVER REGISTRY, UNDER REGISTRY NO. 128960-1

Between:

Gail Davidson and
Lawyers Against the War

Applicants

And

Attorney General of British Columbia
and others

Respondents

Before: The Honourable Madam Justice Satanove

Reasons for Judgment

Counsel for the Applicants:	Gail Davidson
Counsel for the Respondents, Attorney General of British Columbia:	M. L. Ahrens
Date and Place of Trial/Hearing:	November 25, 2005 Vancouver, B.C.

[1] On November 30, 2004, the applicant, Ms. Davidson, swore a private Information under s. 504 of the ***Criminal Code***, R.S.C. 1985, c. C-46 accusing George W. Bush, President of the United States of America, of torture contrary to s. 269.1 and other sections of the ***Code.***

[2] On December 2, 2004 Ms. Davidson appeared in front Judge Kitchen in the Vancouver Registry of the Provincial Court of British Columbia to fix a date for a process hearing under s. 507.1 of the ***Code.*** Ss. 507.1(1) and (2) state:

> (1) A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.
>
> (2) A judge or designated justice to whom an information is referred under subsection (1) and who considers that a case for doing so is made out shall issue either a summons or warrant for the arrest of the accused to compel him or her to attend before a justice to answer to a charge of the offence charged in the information.

[3] Also, on December 2, 2004 the Provincial Crown successfully applied to have the Information declared a nullity. Judge Kitchen found that the Information was a nullity based on the diplomatic immunity of Mr. Bush, and ordered that there be no further proceedings on it. Thus no process hearing has taken place to date.

[4] The applicant appealed to this court by way of Judicial Review. She seeks a Writ of Certiorari quashing Judge Kitchen's decision. She also seeks various declarations, including a declaration that Judge Kitchen's order that the Information was a nullity, violated s. 52 of the ***Constitution Act, 1982***, being Schedule B to the *Canada Act 1982*, (U.K.), 1982, c. 11 and the ***Canadian Charter of Rights and***

Freedoms, Part I of the ***Constitution Act, 1982.*** It is notable that the applicant is not seeking a Writ of Mandamus requiring process to issue.

[5] The Provincial Crown has brought a preliminary objection to continuance of the Judicial Review on the following grounds:

> a. The proceeding is moot because the applicant has not obtained the consent of the Attorney General of Canada to continue this, or any, proceeding concerning the Information.
>
> b. The proceeding is moot because the applicant never had a legal basis upon which to file the Information in Vancouver Provincial Court, and the justice ought not to have received it.
>
> c. The proceeding is moot because the applicant admits she has never intended to ask for process to issue.

[6] I have decided not to deal with grounds “a” and “b” because I find the Crown has successfully persuaded me on ground “c” that this Judicial Review should not proceed further. I have a grave concern that the applicant’s Information, these review proceedings and the intended process hearing all amount to an abuse of process.

[7] When the applicant appeared before Judge Kitchen she made the statement:

> “Lawyers Against the War and myself are not asking at any time for process to issue”.

[8] Crown submits that the issuance of process is the entire focus and purpose of the process hearing, and I agree. By admitting she does not intend to ask for the issuance of process at any time, the applicant has not only rendered the Information moot, as submitted by Crown Counsel, she has shown that she has another goal or

purpose in mind. Given the flavour of the applicant's affidavit evidence and submissions concerning her position on the substantive issues, the only reasonable inference to draw is that she intends to use the criminal procedure under the ***Criminal Code*** as a forum to express her political views.

[9] Ms. Davidson argues that her statement about not asking for process to issue was intended to convey only that she was not seeking an international arrest warrant, or any process in the absence of the Attorney General. She argues that she is seeking the only kind of process that can issue as a result of a process hearing in this case under the ***Criminal Code,*** namely, a summons to appear or a warrant valid only within Canada. (ss. 507.1(2), 509, 514).

[10] This submission only serves to reinforce my concern. Ms. Davidson admits that the only kind of process that could issue in these circumstances against Mr. Bush would be a domestic summons or warrant. Therefore, when she made the statement that she was "not asking at <u>any</u> <u>time</u> (my emphasis) for process to issue" she was referring to process issuing under s. 507.1 of the ***Code.*** Since the issuance of a domestic summons or warrant is the only legitimate purpose for invoking s. 507.1, and since she has admitted she is not seeking this at any time, I can only conclude that Ms. Davidson's agenda is, as I have already noted, a political one. This is not a legitimate purpose for the bringing of a criminal prosecution and should not be encouraged by this court. In my view, this amounts to an abuse of process.

[11] Pursuant to its inherent jurisdiction, this court may stay or dismiss a proceeding where the process of the court is employed for some ulterior or improper

purpose or in an improper way, notwithstanding that the party has complied with the strict literal terms of an applicable rule of law (*Halsbury's Law of England,* 4th ed., vol. 37 (London: Butterworths, 1982) at 332; ***Babavic v. Babowech***, [1993] B.C.J. No. 1802 (S.C.); and ***Novartis Pharmaceuticals Canada Inc. v. Apotex Inc.*** (2002), 20 C.P.R. 4th 300 (F.C.T.D.)).

[12] I am dismissing the applicant's Petition as an abuse of process.

"The Honourable Madam Justice Satanove"