

*Indexed as:*

**Toronto (Metropolitan) Police Force v. Bromell**

**Between**

**David J. Boothby and Toronto Police Services Board,  
plaintiffs, and**

**Craig Bromell, Jack Ritchie, Mark Weatherall, Dennis Ewaniuk,  
Alan Olsen, Andrew Clarke, Donald Courts, Douglas Corrigan and  
Toronto Police Association, defendants, and**

**The Urban Alliance on Race Relations and The Chinese Canadian  
National Council (Toronto Chapter), intervenors, and**

**The Law Union of Ontario, intervenor, and  
The Police Association of Ontario, intervenor**

**[2000] O.J. No. 1674**

[2000] O.T.C. 327

Court File No. 00-CV-184406

Ontario Superior Court of Justice

**Winkler J.**

Heard: February 10, 2000.

Judgment: February 11, 2000.

(19 paras.)

*Injunctions -- Interlocutory or interim injunctions -- Balance of convenience -- Requirement of appearance of right -- Sufficiency of damages in lieu of injunction -- Where damages not adequate.*

Motion by the Toronto Police Services Board and the Chief of Police for an interlocutory injunction to restrain the activities of the President of the Toronto Police Association and the Association in connection with a fundraising campaign. The Association and its President commenced a fundraising campaign that was conducted through a telemarketing program. Significant aspects of the campaign included collecting funds from the public to help the Association challenge politicians who did not support the Association and to help elect those who did. The Association compiled a list of people who did or did not support the campaign through financial contribution, and distributed car decals and wallet cards to those who donated. In response to the campaign, the Board passed a by-law to regulate certain forms of fundraising by police officers, and prohibited solicitation of funds

for political activities. The bylaw also prohibited identification of the person who was solicited and sending those person an identifying insignia. The Association refused to comply with the bylaw, but stated that the campaign would continue with certain modifications. It agreed to cease distributing decals and agreed to refrain from disclosing the names of people who donated or declined to donate. The Board commenced an action against the Association and brought injunction proceedings to restrain the Association's fundraising activities. After the legal proceedings had been commenced, the Association issued a press release that it was discontinuing its fundraising campaign.

HELD: Motion allowed. There were serious issues to be tried, including whether the individual defendants were subject to the Police Services Act, whether the fundraising activities contravened the bylaw and whether the political fundraising of the nature and type in question was unlawful. Further, the Board established that it would suffer irreparable harm if the injunction was not granted. The Board established that the campaign brought discredit upon the reputation of the Toronto Police Service. Harm of such a nature could not be compensated for in damages. Finally, the balance of convenience favoured the Board. The Association's right to raise funds was compensable in damages, while the public's confidence in the Toronto Police Services and the justice system was not.

#### **Statutes, Regulations and Rules Cited:**

Police Services Act, R.S.O. 1990, c. P-15.

#### **Counsel:**

Douglas K. Gray and Michael A. Hines, for the plaintiffs.

John Keefe, Andrew R. Baldwin and Peter D. Ruby, for the defendants.

Julian Falconer and Phil Tsui, for the intervenors.

Howard F. Morton, Q.C., for the intervenor.

Ian J. Roland and George Avraam, for the intervenor.

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**1 WINKLER J.:**-- This is a motion for an interlocutory injunction brought by the Toronto Police Services Board and the Chief of Police to restrain activities of the President and directors of the Toronto Police Association and the Association itself in connection with a fundraising campaign known as "Operation True Blue". The Association represents some 7,000 members of the Toronto Police Service of which over 5,000 are police officers.

**2** The Urban Alliance on Race Relations and The Chinese Canadian National Council (Toronto Chapter) and the Law Union of Ontario were granted intervenor status as friends of the court and supported the moving party. The Police Association of Ontario was also granted intervenor status as a friend of the court.

**3** The Operation True Blue campaign was commenced on or about January 11, 2000 and was conducted through a telemarketing program. Significant aspects of the program included collecting funds from the public to help the Association challenge those politicians who do not support the Association and to help elect those who do. The Association compiled a list of people who did or did not support the campaign through financial contribution, and distributed car decals and wallet cards to people who did donate to the program.

**4** In response to Operation True Blue, the Toronto Police Services Board passed By-law 130 on January 28, 2000. The stated purpose of the By-law is to regulate various forms of fundraising by police officers and prohibit the solicitation of funds for political activities. It also prohibits solicitation that "could possibly involve the appearance of: coercion, intimidation, or the possibility of any contribution which is not entirely voluntary; or the conferring of any preferred status". The By-law also prohibits solicitation by telemarketing, inter alia, whereby the party solicited can be identified, and where a party contributing receives some identifying insignia, such as a decal, card or button.

**5** On January 28, 2000 the Chief of Police wrote to the Directors of the Police Association ordering that Operation True Blue be terminated immediately, and prohibiting soliciting funds "in the manner described in the Rule". In a press release issued January 31, 2000, the Association refused to comply, and instead stated that the campaign would continue with some modifications. These included no longer distributing car decals to people contributing to the campaign, and that names of people who donated or declined would not be disclosed to the Association. Further, no police officers would be involved in the telesales, and the telemarketing would be conducted by an independent company. They stated that any funds collected would only be used for political activity permitted by the Police Services Act and its Regulations. Despite these modifications, the Association gave the Police Services Board 48 hours to rescind the By-law on the ground that it was illegal.

**6** Legal proceedings were commenced by both sides. The Police Services Board commenced an action and brought injunction proceedings before this court. The Police Association brought an application for judicial review of the By-law before the Divisional Court.

**7** The Divisional Court has expedited the application for judicial review, which will be heard February 28, 2000. At that time all of the legal issues will be fully argued relating to the By-law and Operation True Blue, including any constitutional issues that may arise.

**8** On February 3, 2000, after these legal proceedings had been commenced and after a court appearance to set a date for this motion, the Association stated in a press release that it was discontinuing Operation True Blue.

**9** I am satisfied that the plaintiffs have the status to bring this motion for an injunction. They are jointly responsible for providing police services in the city pursuant to the Police Services Act, R.S.O 1990, c. P-15, as amended. Although the Chief of Police has decided not to lay charges under the Police Services Act in respect of this matter, this is an appropriate forum in which to seek the present relief. The Police Services Act does not contain any provisions for a cease and desist order or injunctive relief. See *Metropolitan Toronto (Municipality) Police Services Board v. Metropolitan Toronto Police Association* (1992), 97 D.L.R. (4th) 740 (Ont. Gen. Div.); leave to appeal denied (1992), 97 D.L.R. (4th) 749; and *B.M.W.E. v. Canadian Pacific Ltd.* (1996), 136 D.L.R. (4th) 289 (S.C.C.).

**10** It is settled law on the authority of the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385 that courts should apply a three-fold test in determining whether to grant an interlocutory injunction. Sopinka and Cory JJ, for the court, stated at page 400:

*Metropolitan Stores*, [1987] 1 S.C.R. 110, adopted a three-stage test for courts to apply considering an application for either a stay or an interlocutory injunction. Firstly, a preliminary assessment must be made of the merits of the case to ensure

that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which adopted of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

**11** This motion raises numerous serious issues for trial. These include whether the individual defendants are subject to the Police Services Act, whether the defendants' activities contravene By-law 130, whether or not police officers may engage in political fundraising from the public, or whether this type of activity is prohibited by the Act and Regulations. In particular, there is the issue of whether political fundraising of the nature and type of Operation True Blue is unlawful. The first element of the test for granting an interlocutory injunction is met.

**12** The second branch of the test is whether the plaintiffs on the present facts can establish "irreparable harm". Stated otherwise, can the plaintiffs establish that damages are an inadequate remedy for the acts complained of. The plaintiffs' evidence is that the campaign was based on intimidation, coercion, and misrepresentations in the manner in which it was carried out. They say that the Association engaged in intrusive telemarketing with no guarantee that personal identification would be confidential; distributed wallet cards creating a perception of preferential treatment; and intended to use the solicited funds for political activity. The evidence of the Chief of Police is that these activities in the context of the stated purpose and means by which the campaign was carried out caused harm, in that it brought discredit upon the reputation of the Toronto Police Service. This evidence was uncontradicted. Harm of this nature cannot be compensated for in damages. The second element of the test for an interlocutory injunction is met.

**13** The third branch of the test requires an analysis of the balance of convenience and whether it favours the plaintiffs or defendants. The By-law must be deemed to be lawful until struck down. The parties affected must comply with the law, and it is not appropriate for a court to interfere with the By-law unless and until it is declared invalid. It is especially important that the law be complied with where the defendants are police officers and where the evidence establishes a serious impact on members of the public and their elected representatives. As Linden J. stated in *Morgentaler et al v. Ackroyd* (1983), 42 O.R. (2d) 659 at 668

In my view, therefore, the balance of convenience normally dictates that those who challenge the constitutional validity of laws must obey those laws pending the court's decision. If the law is eventually proclaimed unconstitutional, then it need no longer be complied with, but until that time, it must be respected and this court will enjoin its enforcement. Such a course of action seems to be the best method of ensuring that our society will not continue to respect the law at the same time as it is being challenged in an orderly way in the courts. This does not mean, however, that in exceptional circumstances this court is precluded from granting an interim injunction to prevent grave injustice, but that will be rare indeed.

**14** The Divisional Court will hear the judicial review application concerning the By-law on an expedited basis, on February 28, 2000. Until then, it is in accordance with the case law and in the public interest to maintain the current state of the law by deeming the By-law valid. The By-law is based on the Police Services Act and its Regulations. The granting of an interlocutory injunction

ensures that the law will be observed in the intervening period. No grave injustice will result to the Police Association in this period of time. What is being balanced here is the defendants right to raise funds as compared to the public confidence in the Toronto Police Services and the justice system. One is clearly compensable in damages, while the other is not. The balance of convenience favours the plaintiffs.

**15** The discontinuance of Operation True Blue by the Association provides no reason to dismiss this motion. The Association's stated position that the campaign has ceased, is not binding, cannot be enforced and contains no promise or undertaking that it will not be re-instituted at any time. If it were the defendants' intention to cease permanently or until trial, they could have provided evidence to this effect or given an undertaking to the court. They chose not to do so. The only evidence submitted by the defendants on this motion is in an affidavit deposed by a legal secretary of the law firm of Goodman Philips & Vineberg, to which is attached a letter to the plaintiffs' solicitors enclosing the February 3, 2000 press release, correspondence from the Association to the telemarketing firm, and a letter over the signature of the secretary of the Board of Directors of the Association stating the Board of Director's resolution to terminate Operation True Blue immediately. It is clear from the transcript that any effective cross-examination on this affidavit was futile because the deponent had no knowledge of the events. Thus there is no evidentiary basis for the assertion by the Association that Operation True Blue is permanently discontinued and that there is no need for an injunction.

**16** This motion is not an application for an injunction quia timet, as suggested by the Association. As stated by Sharpe, J.A. in his book, *Injunctions and Specific Performance*, (Looseleaf Edition Canada Law Book Inc: Aurora, 1982) at paragraph 1.660:

All injunctions are future looking in the sense that they are intended to prevent or avoid harm rather than compensate for an injury already suffered. When the plaintiff has already suffered harm, although the remedial focus is often based on the future, what has happened in the past provides the basis for assessing the appropriateness of the remedy. The court is able to see from what has already happened the nature and extent of the future threat posed by the defendant's conduct and is able to assess the appropriateness of injunctive relief on the basis of that experience. The situation is crystallized in the sense that the defendant's course of conduct is settled, its effect upon the plaintiff is known and the relative benefits to the plaintiff, and the burdens an injunction would impose on the defendant, can be assessed.

**17** All of the acts complained of and which provide a basis for the injunctive relief sought have taken place. Based on this it is clear that the continuing risk of harm if Operation True Blue resumes is apparent. The campaign ended only after the injunction papers were served and there was a court appearance on this motion. I cannot accept that the discontinuance in these circumstances can be characterized as voluntary or legitimate.

**18** Moreover, to refer to the discontinuance of Operation True Blue as the defendants do as compliance is a misnomer. The By-law was met with declared disobedience by the Association and a call for its rescission. The defendants refer to the wording of their resolution discontinuing the campaign as evidence that the campaign had been suspended since January 28, 2000. Were this true, at the time of the last court appearance, on February 3, 2000, it would have been in the Associ-

ation's interest to so advise the court. It did not do so. Similarly, to characterize the issue as disciplinary is equally misplaced. The focus of this and the companion court proceeding before the Divisional Court is the By-law aimed at Operation True Blue, its validity in the context of the underlying legislation and compliance with it and the legislation.

**19** Accordingly, an order will go, as amended, granting an interim interlocutory injunction until the Divisional Court's judgment is released and counsel re-attend before me by appointment. The order will grant the relief requested in the Notice of Motion except for paragraphs (iv) and (vi). There shall be no need for an undertaking as to damages from the plaintiffs. The question of costs may be spoken to at the next attendance.

WINKLER J.

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