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Case Summary

Watson Spratt

R v. Spratt; R. v. Watson, 2008 BCCA 340

Facts in the case:

In 1995, the government of British Columbia passed the *Access to Abortion Services Act* (the *Act*), also known as the “Bubble Zone Act.” The *Act* and its regulations establish access zones around abortion clinics, offices of doctors who provide abortion services, and residences of doctors and providers of abortion services. The *Act* prohibits a person who is within an access zone from engaging in sidewalk interference, protesting, or physically interfering or intimidating a service provider, doctor, or patient. This *Act* was passed shortly after Dr. Romalis, an abortion provider in Vancouver, was shot while eating breakfast at his home.

In a conscious move to test the *Act*, in December 1998, Gordon Watson and Donald Spratt entered the access zone surrounding the Everywoman’s Health Clinic in Vancouver. Mr. Watson held two signs that displayed the phrases “Abortion is Murder” and “Unborn persons have the right to live.” Mr. Spratt held a nine-foot-high cross with a sign that said “Thou shall not murder.” Both Mr. Watson and Mr. Spratt attempted to approach clinic staff in direct contravention of the law.

The accused were arrested, charged, and successfully convicted of unlawful behavior within the Clinic’s access zone. They appealed their convictions to the British Columbia Supreme Court and then to the British Columbia Court of Appeal. Both the accused and the Crown agreed that the law infringed their rights to freedom of expression; the issue before the Court of Appeal was whether the Crown could justify its infringement of freedom of expression on the basis that a limitation on this right was prescribed by law and justified in a free and democratic society, pursuant to s.1 of the *Charter of Rights and Freedoms* (the *Charter*). This case raises issues about how conflicting *Charter* rights should be balanced by the Courts; in this case, the right to freedom of expression came into conflict with the rights to safety and security of the person, to privacy, and to equality.

This case is not the first challenge to the validity of the *Access to Abortion Services Act*. In 1996, the British Columbia Supreme Court heard a similar case and found that the challenged sections of the *Act* infringed the plaintiff’s freedom of expression but were justified under section 1 of the *Charter*.

West Coast LEAF’s Argument:

West Coast LEAF intervened in the case as a member of the Access Coalition, which also included the Elizabeth Bagshaw Society, Everywoman’s Health Care Society, BC Pro-Choice Action Network, and the CARE program of the Children’s and Women’s Health Centre of British Columbia.

We argued that the *Act* infringed the right to freedom of expression, but that this contravention was within reasonable limits. Specifically, the Access Coalition argued that the Court should consider the following factors:

- Due to the nature of the debate around abortion and women’s vulnerability and inequality in relation to reproductive health, it follows that women seeking abortion services need some distance between themselves and people who protest their actions;
- Protestors do not have a right to make women entering abortion clinics, or the doctors and staff who provide abortions, hostages to their messages. The right to freedom of expression does not entail the right to a captive audience; and
- The *Act* promotes access to medical services, including abortion services, by providing an atmosphere of security, respect, and privacy for the service providers, doctors, and patients. In this way, the *Act* protects other *Charter* rights, such as the right to equality, privacy, liberty, and security of the person.

The Coalition maintained that in creating the *Access to Abortion Services Act* the British Columbia government took into account and balanced the rights of citizens who work in and attend abortion clinics and the rights of citizens who seek to express their opinions about abortion and abortion clinics. We noted that the right to freedom of expression is not absolute. The *Act* did not limit the protestors’ freedom of expression completely, but disallowed it within a certain zone to ensure equal, safe and dignified access to abortion services.

The British Columbia Court of Appeal agreed with the Access Coalition’s argument and found the objectives of the *Act*, namely protecting the health and safety of citizens who work in or seek the services of abortion clinics in British Columbia, justified this limited infringement on freedom of expression in the circumstances.

The appellants’ appeals of their convictions were dismissed.

Important points that arise from this case are:

1. The *Access to Abortion Services Act* pursues the valid and important objective of protecting women and those who provide for their care so that they have safe, private, dignified and unimpeded access to health care services.
2. Although a rule that prohibits any actions or messages of the protestors in a zone around abortion clinics will sometime capture peaceful protest, it is better to have a clear rule against any interference than to try and distinguish between harmless and violent expression.
3. The protestors are not entitled to a captive audience. Citizens who work in or are patients of the abortion clinics should have the right not to be subjected to the protestors’ behaviour and messages within the access zone around the abortion clinic.

Relevant Legislation:

Access to Abortion Services Act, R.S.B.C. 1996, c.1

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11