

Osborne v Canada (Treasury Board) Time Line
Oct 1990 – June 6 1991 – Supreme Court dismisses the appeal
Osborne v Canada (Treasury Board)
[1991] 2 S.C.R. 69

FACTS

Section 33 of the Public Service Employment Act prohibits any public servant from working on the behalf or against any political party or candidate. It limits their participation to simply contributing funds and/or attending a political meeting. The respondents in this case all wished to engage in political activity, and therefore all commenced separate proceedings seeking a declaration that s. 33 of the Act was unconstitutional. The three actions and ensuing appeals were heard together.

August 1984 – Launched court challenge:

Public Service Commission v. Barnhart, Camponi, Cassidy, Clavette and Stevens

The respondents Barnhart, Camponi, Clavette and Stevens were all public servants who wished to work on the behalf of Cassidy, who was a candidate for election to Parliament. Barnhart and Camponi both worked for the Department of Indian Affairs. Clavette was employed by the Department of National Defence and Stevens worked in the Public Archives of Canada. These respondents commenced proceedings in the Federal Court of Appeal, Trail Division seeking a declaration that s. 33 of the Act violated ss. 2(b) and 2(d) of the Canadian Charter of Rights and Freedoms and, as such, was of no force and effect.

Public Service Commission v. Osborne; Public Service Commission v. Millar

The respondents Osborne and Millar were both public servants who were employed by the Actuarial Branch of the Department of Insurance and the Department of Indian and Northern Affairs respectively. In 1984, the respondents were elected to be delegates at the federal Liberal Party leadership convention. However, they were forced to resign as delegates after being informed by their employers that disciplinary action would be taken against them. Osbourne and Millar commenced separate proceedings in the Federal Court of Appeal, Trail Division seeking declarations that s. 33 of the Act violated ss. 2(b) and 2(d) of the Charter and, as such, was of no force and effect.

LOWER COURTS

1986 - Federal Court (Trial Division) [3fc. 206]

The Federal Court concluded there was in Canada a convention of political neutrality in the public service that demanded some limitations on the partisan political actions of public servants. However, the court also found that the Act required some judicial interpretation when applied to specific cases of political activity. As such, the court limited the remedy to a declaration of which activities of the respondents were permissible under the Act.

In the case of Osborne and Millar, the court found that their election as delegates did not violate s. 33 of the Act. In regards to Barnhart, the court ruled that he should not act as a scrutineer at a polling station. As for Camponi and Clavette, the court concluded that expressing their support for a particular political party would be a violation of s. 33. Finally, in regards to Stevens, the court found that she would not be in violation of the Act as prohibiting the stuffing of envelopes and the addressing of correspondence would be too wide of an interpretation of s. 33.

The court did not discuss whether s. 33 violated ss. 2(b) and 2(d) of the Charter. Instead, it went directly to a discussion of s. 1 of the Charter. The court concluded that a violation of ss. 2(b) and/or 2(d) would be justified under s. 1.

1988 - Federal Court of Appeal [3FC. 219]

The Federal Court of Appeal overturned the judgment of the Federal Court, Trial Division. The court concluded that the challenged section was too vague and open to discretionary application. Therefore, the lower court had erred in limiting the remedy to a declaration of which activities of the respondents were permissible under s. 33 of the Act.

Furthermore, the court found that s. 33 of the Act violated the right to freedom of association on the basis that the right to associate included the ability to advance and oppose interest by electoral means. Finally, in obiter, the court concluded that s. 33(1)(b) of the Act was justifiable under s. 1 of the Charter. However, s. 33(1)(a) of the Act was declared of no force or effect.

The Public Service Commission appealed the judgment of the Federal Court of Appeal to the Supreme Court of Canada.

1991 - Supreme Court of Canada rules in favour of allowing political rights for public service workers