

Winning the battle of controlling ideas

PART III – ARGUMENT

(a) Summary: The Parties' Positions

38. The Appellants submit that the Respondent's road stops infringed s. 9 of the Charter because they were not authorized by any legislative provision or any common law power. They assert that this case involves persons, "deemed of lesser worth by the police", who were detained in a "temporary, but very real police state", under practices which are "institutionalized in authoritarian and totalitarian states", in order to be "identified and subjected to police dominance". Those persons are said to have been singled out based upon "nefarious profiling" based on "suspected group stereotypes", "guilt by association" and "disreputable reputation". The detentions "raise the spectre of unrestrained police conduct", conduct which is "such as would be seen in a police state", based on "police stereotypes based on race or method of dress", leading to unspecified "nefarious consequences". They warn the Court that if it dismisses the appeal, it will "embark down a path that could easily descend into greater and greater abuses", such as targeting on the basis of race, and the distinction between "a totalitarian society and a state ruled by law" will be ignored. The Appellants, referring to a dictionary and not the jurisprudence of this Court, define "arbitrary" in s. 9 of the Charter as meaning "despotic", the synonyms of which are said to be "totalitarian, tyrannical and dictatorial".

39. The Appellants rarely refer to the actual evidence on the record. Instead, as is seen above, they prefer to adopt characterizations that are not based on the evidence and to fashion dark and ominous scenarios, both with some measure of overstatement. The Appellants' analysis of s. 9 of the Charter does not go much beyond taking the dark and ominous scenarios which they have fashioned and then comparing them with the supposed practices in totalitarian, tyrannical and dictatorial regimes and police states. As far as the legal analysis is concerned, the Appellants dismiss in just one single sentence the possibility that the Respondent's actions were authorized by the *Police Services Act* and the common law. As far as s. 9 is concerned, the Appellants fleetingly

refer to only two decisions of this Court concerning s. 9 of the Charter and three pre-1991 decisions of this Court concerning s. 8 of the Charter. Except for attempting to distinguish two lower court authorities which are hostile to their position and which were relied upon by the Court below, they fail to mention any s. 9 authorities. Finally, the Appellants fail to address how this Court should balance the important needs of public safety, public order, peacekeeping and highway safety on the one hand with the vital constitutional rights of individuals on the other hand – perhaps because they only deal with the latter and never acknowledge the existence of the former.