

Josh Dehaas

Counsel, Canadian Constitution Foundation
Suite 215, 6025 – 12 Street SE
Calgary, AB T2H 2K1



Chief Daniel Atkinson
Victoria Fire Department
1025 Johnson Street
Victoria, BC V8V 0G7

August 16, 2024

Sent via e-mail from jdehaas@theccf.ca to vfd@victoria.ca

Dear Chief Atkinson,

I am counsel with the Canadian Constitution Foundation (the “CCF”), a national non-partisan charity that defends the rights and freedoms of Canadians through public education, communication and litigation.

I am writing to implore you to revoke the reported one-day suspension without pay of firefighter Josh Montgomery for exercising his constitutionally-protected right to freedom of expression in his July 17 letter to Premier David Eby.¹ Montgomery’s letter raised good-faith concerns about plans to relocate a drug consumption site and homeless hub to a “quiet family-oriented residential neighbourhood” not far from where his young daughters play. Montgomery expressed concerns not only for the safety of his family but also for the senior citizens who would live next door, and for first responders such as him.

Although municipal employees such as Mr. Montgomery have a limited duty of loyalty to their employers, public employers such as the Victoria Fire Department are legally required to balance that duty with the right to freedom of expression protected under section 2(b) of the *Charter*.

In *Fraser v Canada*,² Supreme Court of Canada Chief Justice Brian Dickson wrote that public servants are not required to stay silent on matters of public policy. Chief Justice Dickson said that our democratic system is “deeply rooted in, and thrives on, free and robust public discussion of public issues” and as such “all members of society should be permitted, indeed encouraged, to participate in that discussion.”³

Chief Justice Dickson explained that while public servants cannot engage in “sustained and highly visible attacks on major Government policies,” they can nonetheless “actively and publicly express opposition to the policies of a Government.”⁴ This is especially appropriate when those policies jeopardize the “life, health or safety of the public servant or others, or if the public servant’s criticism had no impact on his or her ability to perform effectively the duties of a public servant or the public perception of that ability.”⁵ Pushing back against a policy that jeopardizes public safety is exactly what Mr. Montgomery tried to do.

Chief Justice Dickson offered a number of examples of speech that public employees may engage in without violating their duty of loyalty:

¹ Josh Montgomery, Opinion: A first responder’s letter to Premier Eby demanding action in Victoria, CHEK News, July 17, 2024, available online: <<https://www.cheknews.ca/opinion-a-first-responders-letter-to-premier-eby-demanding-action-in-victoria-1214659/>>

² *Fraser v PSSRB*, 1985 CanLII 14 (SCC).

³ *Fraser v PSSRB*, 1985 CanLII 14 (SCC), paras 31-32.

⁴ *Fraser v PSSRB*, 1985 CanLII 14 (SCC), para 41.

⁵ *Fraser v PSSRB*, 1985 CanLII 14 (SCC), para 32.

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- a municipal bus driver attending a town council meeting to protest against a zoning decision having an impact on her residential street;
- a provincial clerk standing in a crowd on a Sunday afternoon and protest a provincial government decision cutting off funding for a day care centre or a shelter for single mothers;
- a federal commissioner could speak out at a Legion meeting to protest against a perceived lack of federal support for war veterans.⁶

These examples all support the conclusion that Mr. Montgomery had a right to express his views publicly.

Other case law from appeals courts also supports this conclusion.

The Alberta Court of Appeal applied the Supreme Court's guidance in *Fraser* to overturn the reprimand of a social services employee who sent a letter that was critical of changes to provincial policy to a member of the opposition.⁷

The British Columbia Court of Appeal considered *Fraser* when overturning school board directives that prevented teachers from discussing political issues such class sizes during parent-teacher interviews.⁸

A unanimous Saskatchewan Court of Appeal overturned a government-empowered regulator's discipline of a nurse who had criticized the end-of-life care that her grandfather had received in social media posts aimed at the province's minister of health and leader of the opposition. Justice Barrington-Foote wrote:"

Nurses, doctors, lawyers and other professionals are also sisters and brothers, and sons and daughters They are dancers and athletes, coaches and bloggers, and community and political volunteers. They communicate with friends and others on social media. They have voices in all of these roles. The professional bargain does not require that they fall silent.⁹

The same general principle applies to firefighters, who are not just employees but parents and citizens.

I am confident that any court or tribunal would agree that Mr. Montgomery's letter was an appropriate exercise of his freedom of expression and that suspending him without pay was a violation of his rights.

The CCF would strongly consider assisting Mr. Montgomery if his suspension is not quickly overturned.

Sincerely,

A handwritten signature in black ink, appearing to read "JL Dehaas".

Josh Dehaas
Counsel, the CCF

⁶ *Fraser v PSSRB*, [1985 CanLII 14 \(SCC\)](#), [para 34](#).

⁷ *AUPE v Alberta*, [2002 ABCA 202 \(CanLii\)](#).

⁸ *British Columbia Public School Employers' Assn v. BCTF*, [2005 BCCA 393 \(CanLii\)](#).

⁹ *Strom v Saskatchewan Registered Nurses' Association*, [2020 SKCA 112 \(CanLii\)](#), [para 166](#).