

A sign of liberties with a fresh coat of paint – *Kosoian v. Société de transport de Montréal* 2019 SCC 59 by M Badejo

As citizens, being able to partake in a society requires a shared responsibility. That responsibility is divvied up not only between oneself and other citizens, but also it varies to standards, degrees and expectations when it comes to how rules and law as of that shared responsibility, that shared context, manifest in everyday life. As citizens that charge police with powers to uphold the laws in our shared society, one of the things we hold police accountable for is the expect that any individual officer would have a reasonable knowledge and understanding of what those laws are, and which ones exist versus which ones do not. In *Kosoian v. Société de transport de Montréal* (2019 SCC 59), we get a front row view to a case that brings this into play. While it is primarily a civil case, it has to do with police powers and expectations, which could be extended into the realm of criminal law due to its commentary on police expectation.

In the case, Ms. Kosoian found herself in a subway station on a downwards escalator. Of note – the escalator had a sign by its entrance that said caution alongside instructing riders to hold the handrail. As she was looking in her purse while riding the escalator, a subway constable saw that she wasn't holding the rail and told her to do so; she ignored this order. At the bottom of the escalator, the constable stopped her to give her a ticket, attempting to bring her to a room to cite her. She initially refused to follow him, but after another officer got involved, she as eventually forced into the room. In the room, she was asked for her ID, but Ms. Kosoian persisted in asking to assert her right to counsel. Despite this, the constables said she was under arrest and handcuffed her, proceeding to search her bag without permission. Distraught and dismayed, Ms. Kosoian was upset at the actions taken and force used, and also received two fines for her trouble: one for disobeying the "hold handrail" signage and one for obstructing the officers. Action was taken by her husband after she relayed the story to him, and she was later found not guilty; she would not have to pay either fine. Ms. Kosoian would then bring action against the Société and the main arresting constable for unlawful and unreasonable arrest.

Over the course of a decade, the case made its way to the SCC, who found in favour of Ms. Kosoian. Though the constable had argued that his action to cite Ms. Kosoian was justified by law (a relevant by-law stated "no one shall disobey a guideline or pictogram posted by [the Société]"), and that her refusal to give ID when citing her justified the arrest altogether, this was reliant on the basis of a legally binding prohibition created by the handrail sign. Ms. Kosoian had argued the sign was merely a suggestion of caution – one that did not create an offence – and the Court agreed. Given the graphic makeup of the sign (which was well different from other legally binding signs around the subway station) and the suggestive language (as opposed to prohibitive), the Court found that the sign did not create an offence and so the basis for the officer's actions fell apart. Given that just because an officer thinks a law exists does not mean it actually is in existence, there is no legal basis for the arrest and thus the detainment and aggression were unlawful and unreasonable.

This case is neatly summed up by paragraph 6 in Justice Cote's decision:

"In a free and democratic society, police officers may interfere with the exercise of individual freedoms only to the extent provided for by law. Every person can therefore legitimately expect that police officers who deal with him or her will comply with the law in force, which necessarily requires them to know the statutes, regulations and by-laws they are called upon to enforce. Police officers are thus

obliged to have an adequate knowledge and understanding of the statutes, regulations and by-laws they have to enforce.”

Implications

There are a handful of weighty implications and reinforcements of existing ideas and trends that come out of this case. As we've seen in the past, the SCC has found another way to enshrine civil liberties in case law, putting a period on the idea that officers can't claim an offence or detain where the offence does not actually exist. It also spells out the limits on police powers, reinforcing the idea that there is a high objective standard that is to be applied to all officers (though it could be argued that “only enforce laws that actually exist” is not a high bar at all in a vacuum). The decision also held firm the notion that officers may be civilly liable, which has the ripple effect of encouraging both less aggressive and well-grounded policing across the country. It's on officers to uphold their responsibility of knowing the law in our shared society.

For the everyday person, it's a reminder that your rights matter and if they're stepped on in the moment, you may have justified, swift and powerful legal recourse – a lesson surely to be applied in the not-too-distant future within the world of criminal law.