Australia:

Victorian government fails to stop sacked teacher's legal challenge

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The Kennett government in the Australian state of Victoria has gone to extraordinary—albeit unsuccessful—lengths to prevent sacked school teacher, Geraldine Rawson, from having her day in court. Rawson's legal action will bring under public scrutiny, for the first time, the methods used by the Victorian Department of Education to intimidate, charge and dismiss scores of teachers throughout the state over the past five years.

In an Industrial Relations Commission hearing on May 17, the Department's legal counsel accused Rawson of launching a "political attack by legal means" and submitted that her unfair dismissal case be terminated as an "abuse of process". While IRC Deputy Senior President Watson ultimately rejected it, the submission highlighted the political character of the Department's three-year victimisation of Rawson, and the significance of her case for all teachers.

Rawson, a teacher with 30 years' experience, was informed of her sacking by the Department in May 1998, two years after allegations of incompetence and failure to maintain classroom discipline were brought against her, under the Victorian Teaching Service Order 140 (TSO 140). From the outset, Rawson denied any wrongdoing, accusing both the school administration and the Department of trying to hound her out of the teaching service.

In an Open Letter to her fellow teachers, written on July 30 1996, four days after the official disciplinary procedure was initiated, Rawson denounced the allegations against her as "laughable". She argued that the real basis of the inquiry was two-fold. Firstly, it was aimed at offloading responsibility onto her shoulders "for the educational, personal and social problems of the students", which, she alleged, the school administration itself was failing to address. Secondly, since she had been injured at the school, had been forced to take sick leave and required ongoing treatment, she had become a financial liability under conditions where "great pressure is being exerted on school administrations to cut costs".

By issuing her Open Letter, Rawson became the first teacher to take a public stand against TSO 140. Under its provisions, no teacher is permitted to comment publicly on education policy or "disclose any information gained during the course of their employment" (Section 3.7). Teachers are also prohibited from discussing any complaints or charges made against them (Section 4.19). As Rawson explained in the letter, " I am being forbidden to even mention these complaints to my colleagues, let alone mount a public defence against them."

"At this school there are two other teachers in a similar situation, while there are hundreds of other teachers in Victoria facing a similar situation. "After a great deal of thought," she continued, "I have taken the decision to publicly expose what is taking place, not only to defend my rights, but those of all teachers."

Some months later, Rawson was charged with the additional offence of breaching clauses 3.7 and 4.19 of TSO 140.

A campaign in Rawson's defence was launched by the Committee to Defend Public Education (CDPE), an organisation established in 1995 by the Socialist Equality Party (SEP) in Australia to oppose budgetary cutbacks and the mounting attacks on the rights of teachers, students and parents in the public school system. Leaflets, CDPE Information Bulletins and other material were circulated in working class areas, drawing out the undemocratic character of the provisions of TSO 140, and highlighting the importance of Rawson's case for all teachers.

On June 2 1998, Rawson lodged an application in the Australian Industrial Relations Commission on the grounds of unfair dismissal. In it she challenged the Department's version of the facts of the case and alleged that her sacking from the teaching service was "harsh, unjust and unreasonable". The IRC hearing would avail her of the opportunity, not permitted at any stage of the internal disciplinary procedure, to face her accusers and subject to cross examination all those upon whose evidence the Department had based its findings.

At the same time Rawson lodged an action in the Supreme Court of Victoria, challenging both the facts of the case and the legality and constitutionality of TSO 140, including that it breached her rights to a fair hearing and to freedom of speech and association.

In February 1999, just before the IRC hearing was due to take place, the Education Department objected to the substantive issues being heard in two different jurisdictions and forced Rawson to elect between them. Rawson chose the IRC, and amended her Supreme Court application to deal only with the constitutional issues. That election was accepted. The hearing was then adjourned to May, on the basis that it would require five days.

On May 17, the first day of the scheduled five-day hearing, the Department's barrister Nicholas Green opened proceedings by submitting that, prior to any witnesses being called, or evidence heard, the presiding Commissioner should permanently stay all proceedings. In front of a large audience of Rawson's supporters, he maintained that her claim of unfair dismissal was simply a smokescreen behind which lay an entirely different motivation: namely, "the launch of the attack on the legal integrity of Teaching Service Order 140".

Furthermore, Green argued, Rawson was not acting alone. On the basis of a series of documents—including Rawson's Open Letter, articles published in *Workers News*, former newspaper of the SEP and material posted on the *World Socialist Web Site* —from which he read

lengthy extracts, Green claimed that Rawson had "tied herself to the wheels of the chariot being driven by ... two organisations...", namely the CDPE and the SEP.

"This Committee has stepped in and taken the running in relation to the campaign concerning Geraldine Rawson."

He went on: "This is an extraordinary expression of support and strategy" by "bodies who have not been given any role by the [Workplace Relations] Act to mount or stage litigation for individuals and litigation which has as its stated aim the bringing down of the Order."

"The literature shows ... that the organisations with which the applicant [Rawson] has aligned herself see this case as a golden opportunity to expose the short-comings they complain of under the Order and to bring down the Order ..."

Green accused Rawson of "explicitly connecting herself with the CDPE" and then commented: "So one is left to ask the question: whose case is this? On the material, there appear to be one or two drivers, neither of whom is the applicant."

According to Green, Rawson's intention was not to challenge the unfair nature of her dismissal at all, but to attack the legislation. Moreover, he suggested that she, or the CDPE, had in some way ***engineered*** the initiation of the disciplinary procedure ***in order*** to mount a case against TSO 140.

"The ink is barely dry" he charged, on Rawson's written response to the allegations, when she goes ahead and publishes, " ***one day after"***, her Open Letter. "A post office box is given with a telephone and fax number.... The applicant was coming out and making a full frontal assault on the Order ...."

Green omitted to mention that Rawson had first been informed of complaints against her some ***seven weeks*** before the formal letter of complaint was sent to her on July 26, 1996.

Green continued: "One also observes in passing that one does not see any reference in the Open Letter to the offer of the support group and the applicant's rejection of it which is what triggered the local inquiry..."

As Rawson's legal counsel, David Grace QC pointed out, interrupting Green, the support group was not even suggested at the time Rawson wrote her Open letter. It was proposed weeks later.

The purpose of Green's "mistake" was, again, to create the impression that Rawson was ***responsible*** for her own dismissal, in order to ***force*** the government, and its legislation into court; hence she did not have a bona fide case.

Concluding his 90-minute submission, Green conceded that "an application of this kind, seeking as it does to invoke a summary power...to dispose of the matter, would not likely be granted." However, he stressed, "putting it at its lowest this is a highly unusual case, and at the very lowest you can be confident on the material the case is a vehicle for an attack on the Order, and that is an improper use of the process that Parliament has given applicants to prosecute their unfair dismissal cases."

In reply, David Grace drew out the highly political character of the Department's stance.

"Accepting the [Department's] submission... would be to shut out for all time any ability of the applicant to challenge factually the basis of her dismissal."

Moreover, he went on, "there has been a lot said about the actions of others, who are said to have carried out the whole process on behalf of Mrs Rawson.

"The issue of political challenge to the state government in relation to the closure of schools and its reduction in the number of teachers has ... been the subject of intense public debate, and to suggest that because newspaper editorials, even of a leftist ... persuasion, side in relation to a particular view, as being a basis for suggesting that Mrs Rawson's claim is spurious, not validly based, abusing the processes of this Commission, is really to say that freedom of speech, and freedom of political expression, is muzzled in this state."

The result would be, Grace drew out, that no government policy would be permitted to be attacked in the state's press.

Grace insisted upon Rawson's right to challenge TSO 140. "It was the [Department] who chose to rely upon breaches of teaching Service Order 140 and certain paragraphs of it to justify at least in part the dismissal of [Mrs Rawson]. They decided that; not us." If the Department were to have its way, this would effectively bar any teacher charged under a particular piece of legislation from challenging that legislation.

Rawson's action in the IRC was, in any case, predominantly aimed at disputing the factual matters involved in her dismissal. The list of 12 witnesses submitted on her behalf, as well as the outlines of their evidence, proved this beyond any doubt.

Senior Deputy President Watson decided to adjourn the case until the Supreme Court had ruled on the constitutional validity of TSO 140, on the basis that the Department would agree to expedite the Supreme Court hearing. A Supreme Court "directional hearing", which will fix a date, has since been set down for July 21.

On May 20, Watson handed down his decision on the Department's "abuse of process" submission, finding in favour of Geraldine Rawson.

Her unfair dismissal case in the IRC, now predicted to last some 10 days, with a total of 24 witnesses called to testify, will thus proceed, whatever the outcome of the Supreme Court action.

The implications of the Department's attempt to stop the IRC hearing are far-reaching. According to its submission, no government worker should have the legal right to challenge any legislation relevant to his or her employment. Nor should they have the right to publicly campaign against such legislation. Moreover, any person seeking to mount a legal case against the government's actions should be barred from obtaining support from community or political organisations.

Ironically, the Department's resort to such arguments only serves to underscore the undemocratic character of its dismissal of Geraldine Rawson.