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Supreme Court of Canada Considers Scope of Collective Bargaining Rights

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The Supreme Court of Canada has today issued its long-awaited judgment in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20. By an 8-1 margin, the Court has found that the *Agricultural Employees' Protection Act, 2002* (*AEPA*) is constitutional.

The case has its genesis in a challenge by Ontario farm workers to their exclusion from the Ontario *Labour Relations Act, 1995*, and the enactment of the *AEPA*, which provides more limited associational protections for agricultural workers.

The *Fraser* case has caused the Supreme Court to consider the scope of constitutional protection afforded to collective bargaining, a right first recognized in the seminal *Health Services* decision, released in 2007. The Court's judgment is complex, and the majority seems to restrict the scope of the constitutional protection to some degree:

Health Services affirms a derivative right to collective bargaining, understood in the sense of a process that allows employees to make representations and have them considered in good faith by employers, who in turn must engage in a process of meaningful discussion. [para 54]

The majority of the Court emphasised that *Health Services* was not intended to constitutionalize a Wagner model of labour relations (e.g. the model currently found in the *LRA*). However, it upheld the general approach found in *Health Services*, in the face of two spirited concurring judgments and one spirited dissent.

Hicks Morley will be preparing a more detailed analysis of the *Fraser* decision, and its likely impact on employers, which will be sent to you early next week.

In the meantime, should you wish more information about this decision, please contact your regular Hicks Morley lawyer.

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