

Case In Point

SCC Grants Leave to Appeal in Freedom of Association/Collective Bargaining Case

Date: December 20, 2012

On December 20, 2012, the Supreme Court of Canada granted leave to appeal in the [Mounted Police Association](#) case which considered whether RCMP Regulations dealing with consultations between management and officers offended the freedom of association guarantee found in section 2(d) of the *Charter*.

This case is important because it deals with the scope of the constitutional protection for collective bargaining. The Court of Appeal for Ontario had concluded, relying on the recent Supreme Court of Canada decision in *Fraser*, that “In order to establish a breach of section 2(d), it must be shown that it is impossible to meaningfully exercise the freedom to associate due to substantial interference by government action, as in *BC Health*, or absence of government action, as in *Dunmore*”. The Court stated that “the extensive collaboration between elected [representatives] and management shows that it is not impossible for the RCMP members to associate to achieve collective goals.” Collective bargaining under section 2(d) “protects only the right to make collective representations and to have those collective representations considered in good faith.”

The Court dealt with another fundamental labour relations issue—on which we can expect further discussion—namely the “majoritarian/exclusivity” principle underlying the *Wagner Act* (and Canadian labour legislation) and criticisms which have been made of it. In addition the Court addresses “the derivative right to collective bargaining,” that is, the proposition that freedom of association may require “a positive obligation to engage in good faith collective bargaining [which] will only be imposed on an employer when it is effectively impossible for the workers to act collectively to achieve workplace goals.” In other words, freedom of association may impose obligations on employers as those who are impacted by the employees’ freedom of association.

Discussions of the freedom of association guarantee and collective bargaining are found in our *FTR Now* of May 3, 2011 “[The Fraser Decision: The Supreme Court of Canada Revisits the Scope of Charter-Protected Collective Bargaining Rights](#)” and our Summer 2012 *FTR Quarterly* article “[Freedom of Association under the Charter: Snake or Tree?](#)”