Case In Point

Saskatchewan Court of Appeal Finds Right to Strike Not Protected by Freedom of Association Guarantee in Charter

Date: April 26, 2013

A five-member panel of the Saskatchewan Court of Appeal has overturned a lower court decision which had found in part that restrictions on the right to strike in *The Public Service Essential Services Act* infringed the freedom of association guarantee in section 2(d) of the *Canadian Charter of Rights and Freedoms*.

The Court of Appeal referred to the 1987 labour trilogy decisions of the Supreme Court of Canada, in which the Supreme Court had concluded that freedom of association does not include the right to strike. The Court of Appeal noted that the finding on that point had not been overturned by the subsequent and evolving jurisprudence of the Supreme Court on section 2(d), and it was, therefore, bound by precedent. It stated:

[6] I conclude, for the reasons set out below, that the Province's appeal with respect to the *Essential Services Act* must be allowed. In 1987, the Supreme Court ruled that freedom of association does not comprehend the right to strike. Its decisions on this point have never been overturned. While the Court's freedom of association jurisprudence has evolved in recent years, it has not shifted far enough, or clearly enough, to warrant a ruling by this Court that the right to strike is protected by s. 2(d) of the *Charter*. Nor does the *Essential Services Act* offend any of the other *Charter* provisions referred to by SFL and the unions. It follows that the Act is constitutionally valid.

Our *FTR Now* on this decision, "No *Charter*-Protected Right to Strike Says Saskatchewan Court of Appeal" is now available.