Case In Point

Supreme Court of Canada to Determine Whether Charter Protects Right to Strike

Date: October 18, 2013

The Supreme Court of Canada will decide whether the *Canadian Charter of Rights and Freedoms* (the "*Charter*") guarantees the right to strike for unions and their members.

Earlier this year, the Saskatchewan Court of Appeal found that the *Charter* does not protect the right to strike. A substantial component of the Court of Appeal's decision addressed the way in which the *Charter*-protected freedom of association has been applied to union activities.

In 1987, the Supreme Court of Canada (the "Supreme Court") adopted a restrictive application of *Charter* rights to union activities in a series of cases described as the "Labour Trilogy." The Supreme Court concluded that neither the process of collective bargaining nor the conduct of a strike attracted *Charter* protection. In more recent decisions, the Supreme Court has adopted a much different view. It has decided that the process of collective bargaining is, in fact, protected by the *Charter*. In contrast, its earlier conclusion that the *Charter* does not protect strike activity has not changed.

The Saskatchewan Court of Appeal ultimately determined that it would not disturb the Supreme Court's earlier conclusion that strike activity does not enjoy *Charter* protection. It emphasized that a departure from precedent could be made only by the Supreme Court itself.

The fact that the Supreme Court will now decide this issue may help clarify the extent to which unions and their members might successfully claim that their activities enjoy constitutional protection.

See our *FTR Now* of April 30, 2013, "No *Charter*-Protected Right to Strike Says Saskatchewan Court of Appeal" for a discussion of the Saskatchewan Court of Appeal decision.