

Mounted Police Association of Ontario/Association de la Police Montée de l'Ontario and B.C. Mounted Police Professional Association on their own behalf and on behalf of all members of the Royal Canadian Mounted Police (applicants/respondents/appellants by way of cross-appeal) v. The Attorney General of Canada (respondent/appellant/respondent by way of cross-appeal) (C50475; 2012 ONCA 363)

Indexed As: Mounted Police Association of Ontario et al. v. Canada (Attorney General)

Ontario Court of Appeal
Doherty, Rosenberg and Juriansz, J.J.A.
June 1, 2012.

Summary:

Two police associations, on behalf of their members, commenced a Charter application, challenging the validity of three provisions governing the current labour relations regime for members of the Royal Canadian Mounted Police (RCMP). The two associations sought a declaration that s. 2(1)(d) of the Public Service Labour Relations Act (Can.) (PSLRA), and ss. 41 and 96 of the Royal Canadian Mounted Police Regulations (Regulations), infringed ss. 2(b), 2(d) and 15 of the Charter. Section 2(1)(d) of the PSLRA excluded RCMP members from the labour relations scheme that enabled most federal public service employees to engage in collective bargaining with management. The RCMP members had a separate employee relations scheme, the Staff Relations Representative Program (SRRP), established by s. 96 of the Regulations. Section 41 of the Regulations prohibited members of the RCMP from publicly criticizing the Force.

The Ontario Superior Court, in a decision reported [2009] O.T.C. Uned. 808, found that s. 96 of the Regulations infringed s. 2(d) of the Charter (freedom of association), and that the infringement could not be justified under s. 1. The applications judge dismissed the associations' other claims. The Attorney General of Canada appealed the holding that s. 96 of the Regulations violated s. 2(d) of the Charter. The two police associations cross-appealed.

The Ontario Court of Appeal allowed the Attorney General's appeal and set aside the application judge's declaration that s. 96 of the Regulations violated the s. 2(d) rights of RCMP members. The court dismissed the associations' cross-appeal. The exclusion of RCMP members from the PSLRA did not violate s. 2(d) of the Charter. Further, the applications judge was correct to refuse to deal with the claim that s. 41 violated s. 2(b) of the Charter (freedom of expression) for lack of factual foundation.

Civil Rights - Topic 2144.1

Freedom of association - Limitations on - Collective bargaining and employer or employee groups - The Ontario Court of Appeal reviewed the jurisprudence respecting the application of s. 2(d) of the Charter (i.e., the freedom of association) in the labour relations context - The court, inter alia, discussed the comment by the Supreme Court of Canada in *Fraser v. Ontario (Attorney General)* (2008) that s. 2(d) protected the right to collective bargaining in a "derivative sense" - The appeal court stated that it understood "... the Fraser majority's discussion of collective bargaining as a derivative constitutional

right, a positive obligation to engage in good faith collective bargaining will only be imposed on an employer when it is effectively impossible for the workers to act collectively to achieve workplace goals" - See paragraphs 68 to 111.

Civil Rights - Topic 2144.1

Freedom of association - Limitations on - Collective bargaining and employer or employee groups - Section 96 of the Royal Canadian Mounted Police (RCMP) Regulations established the Staff Relations Representative Program (SRRP) as the process by which RCMP members could address labour issues with RCMP management - Two police associations, which desired to represent RCMP members in collective bargaining, claimed that s. 96 violated the right to freedom of association (Charter, s. 2(d)) - The Ontario Court of Appeal held that s. 96 did not violate s. 2(d) - Section 96 did not render it effectively impossible for RCMP members to meaningfully exercise their fundamental freedom under s. 2(d) (i.e., to act collectively to achieve workplace goals) because of: (1) the fact that RCMP members were actually able to form the voluntary police associations involved in this case outside the statutory framework; (2) the existence of the SRRP; and (3) the existence of the Legal Fund (a voluntary not-for profit corporation established to help RCMP members with various employment-related issues) - Since it was not effectively impossible for RCMP members to act collectively to achieve workplace goals, it followed that the associations' members were unable to claim the derivative right to collective bargaining under s. 2(d) - Accordingly there was no obligation on the government to take positive action to facilitate the exercise of the RCMP members' s. 2(d)-protected freedom - See paragraphs 112 to 136.

Civil Rights - Topic 2144.1

Freedom of association - Limitations on - Collective bargaining and employer or employee groups - Police associations, which aspired to represent Royal Canadian Mounted Police (RCMP) members in collective bargaining, were unable to do so under the Public Service Labour Relations Act (PSLRA) because s. 2(1)(d) of that Act excluded the RCMP from its application - Rather, s. 96 of the RCMP Regulations established the Staff Relations Representative Program (SRRP) as the process by which RCMP members could address labour issues with RCMP management - At issue was whether the exclusion of the RCMP from the PSLRA violated s. 2(d) of the Charter (the right to freedom of association) - The Ontario Court of Appeal stated that "as it is not effectively impossible for RCMP members to associate collectively to achieve workplace goals, there is no positive obligation on the government to include them in the labour regime set out in the PSLRA. Moreover, the Supreme Court has already addressed the constitutionality of the RCMP members' exclusion from the PSSRA, the predecessor to the PSLRA, in *Delisle* [SCC 1999]" - See paragraph 142.

Civil Rights - Topic 2155

Freedom of association - Limitations on - Labour legislation - [See all **Civil Rights - Topic 2144.1**].

Cases Noticed:

Fraser et al. v. Ontario (Attorney General) (2011), 415 N.R. 200; 275 O.A.C. 205; 2011

SCC 20, refd to. [para. 35].
Health Services and Support - Facilities Subsector Bargaining Association et al. v. British Columbia, [2007] 2 S.C.R. 391; 363 N.R. 226; 242 B.C.A.C. 1; 400 W.A.C. 1; 2007 SCC 27, refd to. [para. 36].
Fraser et al. v. Ontario (Attorney General) (2008), 242 O.A.C. 252; 2008 ONCA 760, refd to. [para. 36].
Delisle v. Canada (Attorney General) et al., [1999] 2 S.C.R. 989; 244 N.R. 33, refd to. [para. 39].
Dunmore et al. v. Ontario (Attorney General) et al., [2001] 3 S.C.R. 1016; 279 N.R. 201; 154 O.A.C. 201; 2001 SCC 94, refd to. [para. 68].
Reference Re Compulsory Arbitration, [1987] 1 S.C.R. 313; 74 N.R. 99; 78 A.R. 1; 38 D.L.R.(4th) 161, refd to. [para. 81].
Reference Re Public Service Employee Relations Act (Alta.) - see Reference Re Compulsory Arbitration.
Public Service Alliance of Canada v. Canada, [1987] 1 S.C.R. 424; 75 N.R. 161; 38 D.L.R.(4th) 249, refd to. [para. 81].
Retail, Wholesale, Department Store Union, Locals 544, 496, 635 and 955 et al. v. Saskatchewan et al., [1987] 1 S.C.R. 460; 74 N.R. 321; 56 Sask.R. 277; 38 D.L.R. (4th) 277, refd to. [para. 81].
Haig et al. v. Canada; Haig et al. v. Kingsley, [1993] 2 S.C.R. 995; 156 N.R. 81, refd to. [para. 99].
Criminal Lawyers' Association (Ont.) v. Ontario (Minister of Public Safety and Security), [2010] 1 S.C.R. 815; 402 N.R. 350; 262 O.A.C. 258; 2010 SCC 23, refd to. [para. 101].

Statutes Noticed:

Canadian Charter of Rights and Freedoms, 1982, s. 2(d) [para. 6].
Public Service Labour Relations Act, S.C. 2003, c. 22, sect. 2(1)(d) [para. 3].
Royal Canadian Mounted Police Act Regulations (Can.), Royal Canadian Mounted Police Regulations, SOR/88-361, sect. 41, sect. 96 [para. 3].

Authors and Works Noticed:

Adams, Roy J., Fraser v. Ontario and International Human Rights: A Comment (2008), 14 Can. Lab. & Emp. L.J. 379, pp. 383-384 [para. 33].
Adams, Roy J., Prospects for Labour's Rights to Bargain Collectively After B.C. Health Services (2009), 59 U.N.B. Law Journal 85, p. 89 [para. 117].
Langille, Brian, Why are Canadian Judges Drafting Labour Codes - And Constitutionalizing the Wagner Act Model? (2010), 15 Can. Lab. & Emp. L.J. 101, p. 108 [para. 34].
Tuohy, Carolyn, J., Policy and Politics in Canada: Institutionalized Ambivalence (1992), p. 164 [para. 31].

Counsel:

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Kelly Henriques and John Craig, for the intervener, the Mounted Police Members' Legal Fund;

James R.K. Duggan, for the intervener, L'Association des Membres de la Police Montée du Québec.

This appeal was heard on November 22, 2011, before Doherty, Rosenberg and Juriansz, J.J.A., of the Ontario Court of Appeal. The following decision was released for the court by Juriansz, J.A., on June 1, 2012.

Appeal allowed;
cross-appeal dismissed.

Editor: Elizabeth M.A. Turgeon

Civil Rights - Topic 2155

Freedom of association - Limitations on - Labour legislation - The Ontario Court of Appeal reviewed the jurisprudence respecting the application of s. 2(d) of the Charter (i.e., the freedom of association) in the labour relations context - The court, inter alia, discussed the comment by the Supreme Court of Canada in *Fraser v. Ontario (Attorney General)* (2008) that s. 2(d) protected the right to collective bargaining in a "derivative sense" - The appeal court stated that it understood "... the Fraser majority's discussion of collective bargaining as a derivative constitutional right, a positive obligation to engage in good faith collective bargaining will only be imposed on an employer when it is effectively impossible for the workers to act collectively to achieve workplace goals" - See paragraphs 68 to 111.

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