RCMP and Freedom to Associate

On May 7, the federal government filed an appeal of the landmark decision of the Ontario Superior Court in *Mounted Police Association of Ontario v AG (Canada)*.[1] The court ruled that the Royal Canadian Mounted Police regulations prohibiting collective bargaining were unconstitutional and in violation of section 2(d) of *The Canadian Charter of Rights and Freedoms*, which protects the freedom of association.[2]

The ruling marks a culmination of court rulings over the past two decades that have expanded the legal interpretation of the freedom of association as protected by the *Charter*. In 1987, in *Delisle*,[3] a member of the RCMP lost an application to the Superior Court of Quebec (and the subsequent appeals) in which it was argued that the exclusion of the RCMP from government regulations allowing for collective bargaining infringed section 2(d) of the *Charter*.[4] The same year, in *Reference re Public Service Employee Relations Act (Alta.)*,[5] the Supreme Court held that section 2(d) did not protect the right to strike or to collective bargaining.[6]

In 2001, the Supreme Court in *Dunmore v. Ontario (AG)*[7] distinguished *Delsile*. In that decision regarding regulation of agricultural workers, the Supreme Court held that unlike the RCMP, agricultural workers should have the right to collective bargaining as they were "more vulnerable" than RCMP members and were not directly protected by the *Charter*, since they were not public employees.[8]

Finally, in 2007, the Supreme Court reversed itself in *B.C. Health Services*.[9] The majority of the Court ruled that the *Charter*'s section 2(d) "protects not only the capacity of employees to make representations in relation to working conditions but also a process of collective bargaining with respect to those conditions."[10] In the decision, Chief Justice McLachlin wrote that "the state must not substantially interfere with the ability of a union to exert meaningful influence over working conditions through a process of collective bargaining conducted in accordance with the duty to bargain in good faith."[11]

Under current RCMP regulations, all members of the RCMP are limited to negotiations carried out under the Staff Relations Representations Program (SRRP).[12] Because the Ontario Superior Court found that the SRRP lacked independence and the ability to provide for collective bargaining, it was found to violate RCMP employees' freedom of association rights. Where *Charter* rights have been found to be violated, they are open to justification under section 1 of the *Charter*, which allows for reasonable limits on those rights if they can be "demonstrably justified in a free and democratic society." However, because most municipal police forces across the country have the right to collective bargaining, and SRRP denied the freedom to bargain and consult, the Court found that the restrictions were unjustifiably severe and held that the SRRP was unconstitutional.[13] The Court allowed the government 18 months to enact new regulations in accordance with *Charter* rights before the SRRP would become illegal.[14] The recent filing for appeal suggests that the government is reluctant to change its legislation to allow RCMP members the

same *Charter* rights enjoyed by their peers in law enforcement and public service.

---

[1] 2009 ONSC 15149.
[2] *Ibid* at para 7.
[3] *Delisle v Canada (Deputy Attorney General),* [1999] SCR 989.
[4] *Supra* note 1 at para 27.
[5] *Reference re Public Service Employee Relations Act (Alberta),* [1987] SCR 313.
[6] *Supra* note 1 at para 33.
[7] *Dunmore v Ontario (Attorney General),* 2001 SCC 94.
[8] *Supra* note 1 at para 40.
[9] *Health Services & Support-Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27.
[10] *Supra* note 1 at para. 46.
[11] *Ibid*.
[12] *Ibid* at para 59.
[13] *Ibid* at para 102-3.
[14] *Ibid* at para 118.