Freedom of Association

Freedom of association is one of the fundamental freedoms protected under section 2 of the *Charter*.[1]Its purpose is to recognize the social nature of human activities and allow individuals to work together to achieve common goals.[2]

Freedom of association protects three types of activities:

1. Joining with others to form associations. This means that government cannot prevent people from meeting together to form a group.
2. Joining with others to pursue other constitutional rights or freedoms. This means that the government cannot stop a group's activities that relate to other constitutional freedoms.
3. Joining with others to bargain, negotiate, and match the strength of more powerful groups of people. This particularly applies to associations of vulnerable people, such as employees. Freedom of association protects their right to strike and collectively bargain with their employers.[3]

Freedom of association is different from other fundamental rights because it does not merely protect an individual's activities. Rather, it protects group activities that an individual cannot perform by themselves. This recognizes that when people form a group, that group can take on "a life of its own" and develop needs that are bigger than those of its individual members.[4] Freedom of association, therefore, is both a collective right and an individual right.

Freedom of association often comes up in the context of trade unions and employee associations. Courts have held that employees have a right to associate to pursue common workplace goals, which includes a right to collective bargaining.[5] It is important to note, however, that this right only protects the *process* of bargaining, and not a particular outcome. Employees have the right to gather together, to present demands to their employer, to engage in discussions to achieve their goals, and to strike if they do not reach an agreement.[6] Government employers have a corresponding duty to meet and engage with employees when they present their demands. Employees do *not* have a right, however, to a specific method of bargaining. Essentially, bargaining has to happen but how it happens is not protected. Similarly, employers have a duty to negotiate, but not duty to come to a certain agreement or agree to any particular terms or conditions.[7]

Like other *Charter* rights, freedom of association has limits. For example, it does not protect a group's violent activities.[8] This means that someone who joins a terrorist organization is not protected by freedom of association from, for example, being deported because of their membership in that organization.[9] Freedom of association also does not apply to some special types of relationships, such as intimate relationships[10] and family relationships.[11]

Freedom of association is also subject to reasonable limits that the government may place on it and justify under section 1 of the *Charter*. For example, governments can limit employees' right to strike if the employees perform services that are essential to society, such as medical or other emergency services.[12]

[1] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

[2] *Mounted Police Association of Ontario v Canada*, 2015 SCC 1 at para 54.

[3] *Ibid* at paras 52-54.

[4] *Dunmore v. Ontario*, [2001] 3 SCR 1016 at para 17.

[5] *Ibid*.

[6] *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at para 75.

[7] *Ontario (Attorney General) v Fraser*, 2011 SCC 20 at paras 41-42, [2011] 2 SCR 3.

[8] *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 107, [2002] 1 SCR 3.

[9] *Ibid*.

[10] *R v Skinner*, [1990] 1 SCR 1235: the Court held that freedom of association did not protect street solicitation for the purposes of prostitution.

[11] *Catholic Children's Aid Society of Metropolitan Toronto v S(T)* (1989), 69 OR (2d) 189 (CA): the Court held that freedom of association did not invalidate provincial child welfare legislation which precluded access by birth parents to children adopted by foster parents.

[12] *Saskatchewan Federation of Labour v Saskatchewan*, *supra* note 6 at para 79.