

Court File No. C50475

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N :**

**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 AND EMPLOYEES  
OF THE ROYAL CANADIAN MOUNTED POLICE**

**Applicants (Respondents in Appeal,  
Appellants in Cross Appeal)**

**- and -**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent (Appellant in Appeal,  
Respondent in Cross Appeal)**

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## TABLE OF CONTENTS

|  | PAGE |
|--|------|
| A. INTRODUCTION .....  | 1    |
| B. THE SRRP IS A LEGITIMATE EMPLOYEE ASSOCIATION .....                             | 2    |
| C. THE SRRP DOES NOT RENDER FREEDOM OF ASSOCIATION EFFECTIVELY<br>IMPOSSIBLE ..... | 4    |
| D. CONCLUDING REMARKS .....  | 5    |
| SCHEDULE "A"<br>LIST OF AUTHORITIES .....  | 7    |
| SCHEDULE "B"<br>RELEVANT STATUTES .....  | 8    |

## A. INTRODUCTION

1. The Supreme Court's decision in *Ontario v. Fraser*<sup>1</sup> clarifies the constitutional protection afforded to collective bargaining as first articulated in *Health Services*.<sup>2</sup> *Fraser* provides that s. 2(d) of the *Charter*<sup>3</sup> protects the freedom of workers to associate to achieve collective workplace goals.<sup>4</sup> This protection is "modest" and "limited", covers only a "general process of collective bargaining", is "derivative" of s. 2(d), and means that workers should be able to have their collective representations "considered in good faith" by employers.<sup>5</sup> Section 2(d) does not guarantee a particular model of labour relations, does not impose a specific bargaining method or substantive outcome, and does not compel an employer to engage in collective bargaining with any employee association that might be formed.<sup>6</sup>
2. In rejecting the Court of Appeal's expansive approach to collective bargaining in *Fraser*, the Supreme Court confirmed that courts should respect and defer to alternative labour relations systems established for particular industries and occupations. In short, the Supreme Court effectively overturned Justice MacDonnell's decision<sup>7</sup> in this matter – a decision that misunderstood the constitutional status of "collective bargaining" after *Health Services*.
3. *Fraser* dictates that the appeal must be allowed. The Court below erred in finding that s. 96 of the *Royal Canadian Mounted Police Regulations* ("Regulations") violates s. 2(d) of the *Charter* because: (1) s. 96 does not make it effectively impossible for RCMP members to exercise their freedom of association and to act collectively to achieve workplace goals; and (2) the Staff Relations Representative Program ("SRRP") is a legitimate employee association that allows RCMP members to make collective representations and facilitates meaningful, good faith dialogue between RCMP members and management on fundamental workplace issues.

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<sup>1</sup> *Ontario (Attorney General) v. Fraser*, 2011 SCC 20 ("*Fraser*"). Appellant's Supplementary Authorities, Tab 1.

<sup>2</sup> *Health Services and Support – Facilities Sector Bargaining Association v. British Columbia*, [2007] 2 S.C.R. 391 ("*Health Services*"), Legal Fund's Book of Authorities, Tab 4.

<sup>3</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Constitution Act 1982* (U.K.) c. 11 (the "*Charter*").

<sup>4</sup> *Fraser*, at para. 46.

<sup>5</sup> *Fraser*, at paras. 51 and 54.

<sup>6</sup> *Fraser*, at para. 47.

<sup>7</sup> *Mounted Police Association of Ontario et al. v. The Attorney General of Canada* (2009), 96 O.R. (3d) 20 (S.C.J.). ("*MPAO*"), Legal Fund's Book of Authorities, Tab 5.

## **B. THE SRRP IS A LEGITIMATE EMPLOYEE ASSOCIATION**

4. The SRRP, established under s. 96 of the *Regulations*, is a legitimate employee association through which RCMP members collectively achieve their workplace goals. Although not a union in the traditional sense, the SRRP is an alternative association for the achievement of workplace goals whose legitimacy is confirmed by the principles in *Fraser*.

5. The *Regulations* do not define the content of the SRRP. Rather, the SRRP has been continuously shaped and reformed, in part, through interactions between RCMP members and management. This changing, flexible and evolving labour relations system respects employee choice and has characteristics of a legitimate employee association:

- The establishment of the SRRP was approved by the majority of members of the RCMP and management after force-wide consultation in May 1974.<sup>8</sup>
- Staff Relations Representatives (SRRs), who carry out the work of the SRRP, are democratically elected by RCMP members.<sup>9</sup>
- Under the SRRP Constitution (adopted upon ratification by the SRRs), the SRRP is to “be recognized as the system and program of choice for management-employee relations for members of the RCMP.”<sup>10</sup>
- The SRRP engages in associational activities such as meetings, the formulation of collective positions on employment issues, the direct communication of these collective positions to management (*i.e.* collective representations), and the participation of SRRs in the policy making process and on the RCMP Pay Council.<sup>11</sup>
- The Mounted Police Members’ Legal Fund / Fonds de Recours Juridique des Membres de la Gendarmerie (“Legal Fund”), a not-for-profit corporation under the *Canada Corporations*

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<sup>8</sup> *MPAO*, at paras. 22-23.

<sup>9</sup> *MPAO*, at para. 15 and *RCMP Regulations*, s. 96(2).

<sup>10</sup> *MPAO*, at para. 29.

<sup>11</sup> *MPAO*, at para. 16.

*Act*,<sup>12</sup> was created by, and for, RCMP members to support the representational work of the SRRP. The Legal Fund works alongside RCMP members, hears their concerns and, where appropriate, assists them with grievances or other disputes, up to and including bringing applications for judicial review. It is funded exclusively by its members dues, and is entirely self-governed, autonomous and independent.

6. Recently, the Federal Court in *RCMP v. Attorney General of Canada*<sup>13</sup> recognized that the RCMP Pay Council, an advisory board established in 1996 to provide RCMP members with a vehicle to negotiate with management, is an important associational entity protected by s. 2(d) of the *Charter*.<sup>14</sup> Pay Council, which is comprised of two representatives selected by the SRRP, two management representatives, and an impartial chair, solicits the views of RCMP members on issues relating to members' pay, formulates recommendations and presents them to the Commissioner.<sup>15</sup> The Federal Court observed that while Pay Council's work is not "wholly equivalent to collective bargaining", it is the formal means through which RCMP members can collectively pursue goals relating to remuneration.<sup>16</sup> By extension, the SRRP is a protected association under s. 2(d) since it also provides a formal means for RCMP members to achieve workplace goals collectively.

7. The existence of the SRRP does not, in any way, preclude other employee associations. There is nothing in the SRRP or s. 96 of the *Regulations* that prohibits RCMP members from establishing parallel independent employee associations. In *Delisle v. Canada*, the Supreme Court accepted that the exclusion of RCMP members from a specific labour relations regime did not preclude the establishment of parallel independent employee associations.<sup>17</sup> The fact that

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<sup>12</sup> *Canada Corporations Act*, R.S. 1970, c. C-32

<sup>13</sup> *Royal Canadian Mounted Police v. Attorney General of Canada*, 2011 FC 735 ("*RCMP*"), Legal Fund's Supplementary Book of Authorities, Tab 1

<sup>14</sup> *RCMP*, at paras. 12-16 and 72-73.

<sup>15</sup> *MPAO*, at para. 19

<sup>16</sup> *RCMP*, at para. 72.

<sup>17</sup> *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989 at para. 28 ("*Delisle*"). Legal Fund's Book of Authorities, Tab 2.

such associations had actually been created was sufficient to support this conclusion.<sup>18</sup> *Delisle* remains good law today, untouched by *Fraser*.

**C. THE SRRP DOES NOT RENDER FREEDOM OF ASSOCIATION EFFECTIVELY IMPOSSIBLE**

8. Justice MacDonnell's fundamental error was to ask and answer the wrong question, namely: *Does the SRRP make it impossible for RCMP members to engage in a process of collective bargaining?* Notably, this was very similar to the question asked and answered – erroneously – by the Court of Appeal in *Fraser*. It is the same question the Respondents continue to ask and answer – erroneously – in this appeal.

9. In assessing the claim that agricultural workers had a constitutional right to a statutory collective bargaining scheme instead of the *Agricultural Employees Protection Act* ("AEPA"), the Supreme Court in *Fraser* asked the question: *Does the AEPA make it effectively impossible for agricultural workers to exercise their freedom of association in pursuit of workplace goals?* Accordingly, the proper question to be asked on this appeal is: ***Do s. 96 of the Regulations and the SRRP make it effectively impossible for RCMP members to exercise their freedom of association in pursuit of workplace goals?***

10. There is nothing in s. 96 or the SRRP that interferes with the ability of RCMP members to exercise their freedom to associate to achieve workplace goals. On the contrary, RCMP members have been doing precisely this for decades, as found in *Delisle*. While employee associations like the Respondent have not been recognized for purposes of collective bargaining, this has not rendered the exercise of freedom of association effectively impossible.

11. Moreover, the SRRP is a legitimate alternative system that fulfills the associational requirements of s. 2(d) of the *Charter* for RCMP members. The SRRP is highly respectful of RCMP members' freedom to associate in the following ways:

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<sup>18</sup> *Delisle*, at para. 31. See also *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 at para. 41 ("*Dunmore*"), Legal Fund's Book of Authorities, Tab 3 wherein the Supreme Court of Canada observed that RCMP members "had the strength to form employee associations in several provinces despite their exclusion from the PSSRA."



- Collective representations: through their democratically elected SRRs, RCMP members exercise their freedom to associate to achieve workplace goals by, among other things, voicing their concerns and making representations to RCMP management.
- Employer consideration in good faith: RCMP management is contractually<sup>19</sup> obligated to “recognize the role of the SRRP”, to “respond to proposals and requests from SRRs in a timely and meaningful fashion” and “provide rationale[s] for major decisions.”<sup>20</sup> In fact, RCMP management listens carefully and with an open mind to the representations of the SRRs, the collaboration that occurs between the SRRs and management is extensive, and this collaboration is carried out in good faith by everyone involved.<sup>21</sup>
- Dispute resolution: A dispute resolution and grievance process has been put in place for RCMP members through a legislative regime involving the Commissioner and an external review committee. The *RCMP Act* also provides a final resort grievance process if an RCMP member is aggrieved by a decision, act or omission in the administration of the force.<sup>22</sup> In addition, the Legal Fund assists RCMP members with matters affecting their dignity and welfare by acting on their behalf to help resolve issues with management.

#### D. Concluding Remarks

12. Section 96 of the *Regulations* and the SRRP satisfy the associational requirements of s. 2(d) of the *Charter*. Section 96 protects the right of RCMP members to make collective representations to management on workplace issues. It also protects the right of RCMP members to have their representations considered in good faith through meaningful discussions and consultations between their elected SRRs and management. The appropriate checks and balances are in place to ensure that RCMP members’ freedom of association is protected. The Legal Fund therefore respectfully requests that the appeal be allowed.

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<sup>19</sup> *MPAO*, at paras. 16-18.

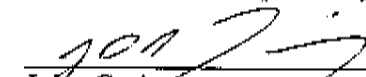
<sup>20</sup> *MPAO*, at para. 16.

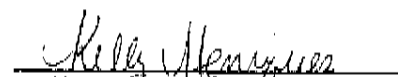
<sup>21</sup> *MPAO*, at paras. 68 and 13

<sup>22</sup> *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, s. 31

October 3, 2011

All of which is respectfully submitted

  
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**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989
2. *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016
3. *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391
4. *Mounted Police Association of Ontario et al. v. The Attorney General of Canada* (2009), 96 O.R. (3d) 20 (S.C.J.)
5. *Ontario (Attorney General) v. Fraser* 2011 SCC 20
6. *Royal Canadian Mounted Police v. Attorney General of Canada*, 2011 FC 735

**SCHEDULE "B"**  
**RELEVANT STATUTES**

1. ***Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11***

**FUNDAMENTAL FREEDOMS**

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(d) freedom of association.

2. ***Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10***

**PRESENTATION OF GRIEVANCES**

**Right of member**

31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

3. ***Royal Canadian Mounted Police Regulations, 1988, SOR/88-361***

**DIVISION STAFF RELATIONS REPRESENTATIVE PROGRAM**

96. (1) The Force shall have a Division Staff Relations Representative Program to provide for representation of the interests of all members with respect to staff relations matters.

(2) The Division Staff Relations Representative Program shall be carried out by the division staff relations representatives of the members of the divisions and zones who elect them.

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ATTORNEY GENERAL OF CANADA  
 and  
 Respondent (Appellant in Appeal,  
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PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTARY SUBMISSIONS OF THE  
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