SCC File No. 35423

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE SASKATCHEWAN COURT OF APPEAL)

B E T W E E N:

SASKATCHEWAN FEDERAL OF LABOUR
(IN ITS OWN RIGHT AND ON BEHALF OF THE UNIONS AND WORKERS IN THE PROVINCE OF SASKATCHEWAN);
AMALGAMATED TRANSIT UNION, LOCAL 588;
CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES' UNION, LOCAL 397,
CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS 7 AND 4828;
COMMUNICATIONS, ENERGY AND PAPERWORKERS' UNION OF CANADA;
HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN;
INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF U.S., ITS TERRITORIES AND CANADA AND ITS LOCALS 295, 300 AND 669;
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 529, 2038, AND 2067; SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION; SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION; SASKATCHEWAN PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL; TEAMSTERS, LOCAL 395;
UNITED MINEWORKERS OF AMERICA, LOCAL 7606;
UNITED STEEL, PAPER, FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION; AND UNIVERSITY OF REGINA FACULTY ASSOCIATION

Appellants
(Respondents/Appellants By Cross-Appeal)

AND:

HER MAJESTY THE QUEEN, IN RIGHT OF THE PROVINCE OF SASKATCHEWAN

Respondent
(Appellant/Respondent By Cross-Appeal)

FACTUM OF THE INTERVENERS CANADIAN UNION OF POSTAL WORKERS AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

AND:

ATTORNEY GENERAL OF CANADA;
ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR;
ATTORNEY GENERAL OF BRITISH COLUMBIA;
ATTORNEY GENERAL OF ONTARIO;
ATTORNEY GENERAL OF QUEBEC;
ATTORNEY GENERAL OF ALBERTA;
CANADIAN UNION OF POSTAL WORKERS AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS;
SASKATCHEWAN UNION OF NURSES;
SEIU-WEST;
UNITED NURSES OF ALBERTA;
ALBERTA FEDERATION OF LABOUR;
PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA;
CANADIAN CONSTITUTION FOUNDATION;
AIR CANADA PILOTS' ASSOCIATION;
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION;
CONSEIL DU PATRONAT DU QUÉBEC;
CANADIAN EMPLOYERS COUNCIL;
PUBLIC SERVICE ALLIANCE OF CANADA;
ALBERTA UNION OF PROVINCIAL EMPLOYEES;
CONFÉDÉRATION DES SYNDICATS NATIONAUX;
REGINA QU'APPELLE REGIONAL HEALTH AUTHORITY;
CYPRESS REGIONAL HEALTH AUTHORITY, FIVE HILLS REGIONAL HEALTH AUTHORITY, HEARTLAND REGIONAL HEALTH AUTHORITY, SUNRISE REGIONAL HEALTH AUTHORITY, PRINCE ALBERT PARKLAND REGIONAL HEALTH AUTHORITY AND SASKATOON REGIONAL HEALTH AUTHORITY;
CANADIAN LABOUR CONGRESS;
BRITISH COLUMBIA TEACHERS' FEDERATION AND HOSPITAL EMPLOYEES' UNION;
NATIONAL UNION OF PUBLIC AND GENERAL EMPLOYEES; and
CANADA POST CORPORATION AND AIR CANADA

Interveners

CAVALLUZZO SHILTON McINTYRE CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Paul J.J. Cavalluzzo, LSUC #13446V
Adrienne Telford, LSUC #56169T
Tel: 416-964-1115
Fax: 416-964-5895

Lawyers for the Interveners, Canadian Union of Postal Workers and International Association of Machinists and Aerospace Workers

SUPREME LAW GROUP
900 - 275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel: (613) 691-1224
Fax: (613) 691-1338
E-mail: mdillon@supremelawgroup.ca

Agent for the Interveners, Canadian Union of Postal Workers and International Association of Machinists and Aerospace Workers

Victory Square Law Office LLP
500- 128 West Pender Street
Vancouver, BC V6B 1R2

Craig Bavis
Tel: (604) 684-8421
Fax: (604) 684-8427
Email: cbavis@vslo.bc.ca

Gerrand Rath Johnson
700-1914 Hamilton Street
Regina, SK S4P 3N6

Rick Engel, QC
Tel: (306) 522-3030
Fax: (306) 522-3555
Email: rengel@grj.ca

The W Law Group
300, 110- 21 Street East
Saskatoon, SK S7K OB6

Peter Barnacle
Tel: (306) 244-2242
Fax: (306) 652-0332
Email: pbarnacle@wlawgroup.com

Co-counsel for the Appellants

Sack Goldblatt Mitchell LLP
500- 30 rue Metcalfe Street
Ottawa, ON KIP 5L4

Colleen Bauman
Tel: (613) 482-2455
Fax: (613) 235-3041
Email: cbauman@sgmlaw.com

Agent for the Appellants

Saskatchewan Justice, Constitutional Law
8th Floor- 1874 Scarth Street
Regina, SK S4P 3V7

Graeme G. Mitchell, QC
Tel: (306) 787-8385
Fax: (306) 787-9111
Email: gmitchell@justice.gov.sk.ca

Counsel for the Respondent Government of Saskatchewan

Gowling Lafleur Henderson LLP
2600 - 160 Elgin St
P.O. Box 466, Stn "D"
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Respondent Government of Saskatchewan

Attorney General of Canada
123- 2nd Avenue S., 10th Floor
Saskatoon, SK S7K 7E7

Mark R. Kindrachuk, Q.C.
Tel: (306) 975-4765
Fax: (306) 975-6240
Email: mark.kindrachuk@justice.gc.ca

Counsel for the Intervener, Attorney General of Canada

Attorney General of Canada
50 O'Connor Street, Suite 50, Room 557
Ottawa, ON KIP 6L2

Christopher Rupar
Tel: (613) 670-6290
Fax: (613) 954-1920
Email: christopher.rupar@justice.gc.ca

Agent for the Intervener, Attorney General of Canada

Attorney General of Newfoundland & Labrador
4th Floor, East Block
Confederation Bldg.
St. John's, NL A1B 4J6

Chantelle MacDonald Newhook
Tel: (709) 729-4053
Fax: (709) 729-2129

Counsel for the Intervener, Attorney General of Newfoundland & Labrador

Burke-Robertson
200 - 441 MacLaren Street
Ottawa, Ontario K2P 2H3

Robert E. Houston, Q.C.
Tel: (613) 566-2058
Fax (613) 235-4430
Email: rhouston@burkerobertson.com

Agent for the Intervener, Attorney General of Newfoundland & Labrador

Attorney General of British Columbia
1301- 865 Hornby Street
Vancouver, BC V6Z 2G3

Karen A. Horsman
Tel: (604) 660-3093
Fax: (604) 660-3833

Counsel for the Intervener,
Attorney General of British Columbia

Gowling Lafleur Henderson LLP
Barristers & Solicitors
2600, 160 Elgin Street
Ottawa, ON K1P 1C3

Brian A. Crane, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: brian.crane@gowlings.com

Agent for the Intervener,
Attorney General of British Columbia

Attorney General of Ontario
720 Bay Street, 4th Floor
Toronto, ON M5G 2K1

Robert Earl Charney
Tel: (416) 326-4452
Fax: (416) 326-4015

Counsel for the Intervener,
Attorney General of Ontario

Burke-Robertson
200 - 441 MacLaren Street
Ottawa, Ontario K2P 2H3

Robert E. Houston, Q.C.
Tel: (613) 566-2058
Fax (613) 235-4430
Email: rhouston@burkerobertson.com

Agent for the Intervener,
Attorney General of Ontario

Attorney General of Quebec
1200 route de l'Eglise, 2e etage
Quebec, QC G1V 4M1

Caroline Renaud
Tel: (418) 643-1477, ex. 20780
Fax: (418) 644-7030
Email:
caroline.renaud@justice.gouv.qc.ca

Counsel for the Intervener,
Attorney General of Quebec

Noel et Associes
111 Champlain Street
Gatineau, QC J8X 3R1

Pierre Landry
Tel: (819) 771-7393
Fax: (819) 771-5397
Email: p.landry@noelassocies.com

Agent for the Intervener,
Attorney General of Quebec

Attorney General of Alberta
9833 - 109th St. NW, 4th Floor
Edmonton, AB T5K 2E8

Roderick Wiltshire
Tel: (780) 422-7145
Fax: (780) 425-0307
Email: roderick.wiltshire@gov.ab.ca

Counsel for the Intervener, Attorney General of Alberta

Gowling Lafleur Henderson LLP
2600, 160 Elgin Street
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Intervener, Attorney General of Alberta

Bainbridge Jodouin Cheecham
401 - 261 First Avenue North
Saskatoon, SK S7K 1X2

Gary Bainbridge
Marcus R. Davies
Tel: (306) 664-2468
Fax: (306) 664-2469
E-mail: gbainbridge@bjhlaw.ca

Counsel for the Intervener, Saskatchewan Union of Nurses

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Agent for the Intervener, Saskatchewan Union of Nurses

Plaxton & Company
500, 402 - 21st Street East
Saskatoon, SK S7K 0C3

Drew S. Plaxton
Heather M. Jensen
Tel: (306) 653-1500
Fax: (306) 664-6659
E-mail: contactus@plaxtonlaw.com

Counsel for the Intervener, SEIU-West

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, SEIU-West

Chivers Carpenter
#101, 10426 - 81 Avenue
Edmonton, AB T6E 1X5

Ritu Khullar
Vanessa Cosco
Tel: (780) 439-3611
Fax: (780) 439-8543
E-mail: rkhullar@chiverslaw.com

Counsel for the Intervener, United Nurses of Alberta

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, United Nurses of Alberta

Chivers Carpenter
#101, 10426 - 81 Avenue
Edmonton, AB T6E 1X5

Ritu Khullar
Tel: (780) 439-3611
Fax: (780) 439-8543
E-mail: rkhullar@chiverslaw.com

Counsel for the Intervener, Alberta Federation of Labour

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, Alberta Federation of Labour

Sack Goldblatt Mitchell LLP
500-30 Metcalfe Street
Ottawa, ON K1P 5L4

Peter C. Engelmann
Telephone: (613) 482-2452
FAX: (613) 235-3041
E-mail: pengelmann@sgmlaw.com

Counsel for the Intervener, Professional Institute of the Public Service of Canada

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, Professional Institute of the Public Service of Canada

McCarthy Tétrault LLP
Box 48, 5300-66 Wellington St. W.
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Neil Finkelstein
Darryl Cruz
Brandon Kain
Ronald Podolny
Sunil Kapur
Tel: (416) 362-1812
Fax: (416) 868-0673

Counsel for the Intervener, Canadian Constitution Foundation

Gowling Lafleur Henderson LLP
2600 - 160 Elgin St
P.O. Box 466, Stn "D"
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Intervener, Canadian Constitution Foundation

Nelligan O'Brien Payne LLP
1900 - 66 Slater Street
Ottawa, ON K1P 5H1

Steve Waller
Christopher Rootham
Tel: (613) 238-8080
Fax: (613) 238-2098
E-mail: steve.waller@nelligan.ca

Counsel for the Intervener, Air Canada Pilots' Association

Moore, Edgar, Lyster
195 Alexander St., 3rd Floor
Vancouver, BC V6A 1N8

Lindsay M. Lyster
Tel: (604) 689-4457
Fax: (604) 689-4467
E-mail: lindsaylyster@unionlawyers.com

Counsel for the Intervener, British Columbia Civil Liberties Association

Supreme Law Group
900 - 275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel: (613) 691-1224
Fax: (613) 691-1338
E-mail: mdillon@supremelawgroup.ca

Agent for the Intervener, British Columbia Civil Liberties Association

Norton Rose Fulbright Canada LLP
1, Place Ville Marie, Bureau 2500
Montréal, QC H3B 1R1

Louise Laplante
Nancy Ménard-Cheng
Sébastien Beauregard
Tel: (514) 847-4747
Fax: (514) 286-5474
E-mail:
louise.laplante@nortonrosefulbright.com

Counsel for the Intervener, Conseil du patronat du Québec

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

John D. R. Craig
Christopher D. Pigott
Tel: (416) 366-8381
Fax: (416) 364-7813
E-mail: jcraig@fasken.com

Counsel for the Intervener, Canadian Employers Council

Fasken Martineau DuMoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5

Yael Wexler
Tel: (613) 236-3882
Fax: (613) 230-6423
E-mail: ywexler@fasken.com

Agent for the Intervener, Canadian Employers Council

Raven, Cameron, Ballantyne & Yazbeck LLP
1600 - 220 Laurier Ave West
Ottawa, ON K1P 5Z9

Andrew Raven
Andrew Astritis
Morgan Rowe
Tel: (613) 567-2901
Fax: (613) 567-2921
E-mail: araven@ravenlaw.com

Counsel for the Intervener, Public Service Alliance of Canada

Nugent Law Office
2nd Floor, 10008 82nd Ave
Edmonton, AB T6E 1Z3

Patrick G. Nugent
Tel: (780) 439-3232
Fax: (780) 439-3032

Counsel for the Intervener, Alberta Union of Provincial Employees

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, Alberta Union of Provincial Employees

Laroche Martin
2100 boulevard de Maisonneuve Est
Bureau 501
Montréal, QC H2K 4S1

Benoit Laurin
Tel: (514) 529-4901
Fax: (514) 529-4932
E-mail: benoit.laurin@csn.qc.ca

Counsel for the Intervener, Confédération des syndicats nationaux

Noël & Associés
111 rue Champlain
Gatineau, QC J8X 3R1

Sylvie L'Abbé
Tel: (819) 771-7393
Fax: (819) 771-5397
E-mail: s.labbe@noelassocies.com

Agent for the Intervener, Confédération des syndicats nationaux

MacPherson Leslie & Tyerman LLP
1500, 410 - 22nd Street East
Saskatoon, SK S7K 5T6

Leah Schatz
Robert Frost-Hinz
Tel: (306) 975-7100
Fax: (306) 975-7145
E-mail: lschatz@mlt.com

Counsel for the Intervener, Regina Qu'Appelle Regional Health Authority

Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlings.com

Agent for the Intervener, Regina Qu'Appelle Regional Health Authority

MacPherson Leslie & Tyerman LLP
1500, 410 - 22nd Street East
Saskatoon, SK S7K 5T6

Leah Schatz
Robert Frost-Hinz
Evert van Olst, Q.C.
Tel: (306) 975-7100
Fax: (306) 975-7145
E-mail: lschatz@mlt.com

Counsel for the Intervener, Cypress Regional Health Authority, Five Hills Regional Health Authority, Heartland Regional Health Authority, Sunrise Regional Health Authority, Prince Albert Parkland Regional Health Authority and Saskatoon Regional Health Authority

Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlings.com

Agent for the Intervener, Cypress Regional Health Authority, Five Hills Regional Health Authority, Heartland Regional Health Authority, Sunrise Regional Health Authority, Prince Albert Parkland Regional Health Authority and Saskatoon Regional Health Authority

Sack Goldblatt Mitchell LLP
20 Dundas St West, Suite 1100
Toronto, ON M5G 2G8

Steven Barrett
Tel: (416) 979-6070
Fax: (416) 591-7333
E-mail: stevenbarrett@sgmlaw.com

Counsel for the Intervener, Canadian Labour Congress

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, Canadian Labour Congress

Farris, Vaughan, Wills & Murphy LLP
25th Floor, 700 West Georgia Street
Vancouver, BC V7Y 1B3

Joseph J. Arvay, Q.C.
Catherin J. Boise Parker
Tel: (604) 684-9151
Fax: (604) 661-9349
E-mail: jarvay@farris.com

Counsel for the Intervener, British Columbia Teachers' Federation and Hospital Employees' Union

Sack Goldblatt Mitchell LLP
500 - 30 Metcalfe St.
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: (613) 235-5327
Fax: (613) 235-3041
E-mail: cbauman@sgmlaw.com

Agent for the Intervener, British Columbia Teachers' Federation and Hospital Employees' Union

Champ and Associates
43 Florence Street
Ottawa, ON K2P 0W6

Paul Champ
Tel: (613) 237-4740
Fax: (613) 232-2680
E-mail: pchamp@champlaw.ca

Counsel for the Intervener, National Union of Public and General Employees

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre
Toronto, ON M5H 2T6

Brian W. Burkett
Telephone: (416) 865-4466
FAX: (416) 364-7813
E-mail: bburkett@fasken.com

Counsel for the Intervener, Canada Post Corporation and Air Canada

Fasken Martineau DuMoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5

Yael Wexler
Tel: (613) 236-3882
Fax: (613) 230-6423
E-mail: ywexler@fasken.com

Agent for the Intervener, Canada Post Corporation and Air Canada

INDEX

PART I: OVERVIEW & POSITION ON THE QUESTIONS IN ISSUE

1. The Canadian Union of Postal Workers and the International Association of Machinists and Aerospace Workers ("the Unions") confine their submissions to the issue of whether government legislation which interferes with the right of workers to strike infringes s. 2(d) of the *Charter* and can be justified under s. 1. The Unions agree with the Appellants and several Interveners that the right to strike comes within the scope of s. 2(d) protection because: (1) s.2(d) protects the ability of individuals to do in association what they can lawfully do alone, and the law unequivocally permits an individual to withdraw his or her labour;[1] and (2) the strike is indispensable to meaningful collective bargaining, the latter of which is protected by s. 2(d).[2]

2. The Unions further submit as follows: (1) an additional reason the freedom to collectively withdraw labour is at the core of the *Charter*'s protection of freedom of association is that the activity is foundational to sustaining a free and democratic society and to promoting the universal aspirations of democracy, liberty, equality, human dignity, and personal autonomy; (2) the threshold for proving a breach under s. 2(d) must reflect the fundamental nature of the freedom; and (3) s. 2(d) and s. 1 of the *Charter* must remain analytically distinct, and any deference to the legislature in labour relations should be considered under s. 1.

PART II: STATEMENT OF ARGUMENT

A. Freedom To Collectively Withdraw Labour At Core Of Freedom Of Association

3. ***Contextual and purposive analysis of Charter rights required.*** This Court has expressly

---

[1] *Dunmore v. Ontario (Attorney General)*, [2001] 3 SCR 1016, para. 14 [**Appellants' Authorities "AA" T13**] (summarizing McIntyre J.'s three elements of s. 2(d) protection in *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313, para. 174 [**AA T25**]; *Ontario (Attorney General) v. Fraser*, [2011] 2 SCR 3, para. 272-75 [**AA T17**] per Rothstein J; and D. Beatty & S. Kennett, "Striking Back: Fighting Words, Social Protest and Political Participation in Free and Democratic Societies" (1988) 13 Queens LJ 214 at 229-36 [**Unions' Authorities "UA" T12**]:"Certainly the law does not *prohibit* an employee from withdrawing her services from a particular workplace as it onetime did. … The present law guarantees every worker the freedom to leave his or her employment whenever he or she feels so inclined." (at 233-34). See also S. Barrett & B. Oliphant, "The *Trilogy* Strikes Back: Reconsidering Constitutional Protection For The Freedom To Strike", Ottawa Law Review (forthcoming 2014) at 14-19 [**AA T53**].

[2] *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, [2007] 2 SCR 391, para. 20 [**AA T14**]; *Fraser*, para. 51 [**AA T17**]. On the indispensable relationship between the right to strike and meaningful collective bargaining, see: *Alberta Reference*, para. 94-96 [AA T25] per Dickson CJ (citing *inter alia*, the Woods Task Force Report); G. England, "Some Thoughts on Constitutionalizing the Right to Strike" (1988) 13 Queens LJ 168 at 177 [**UA T16**]; B. Hepple, "The Right to Strike in an International Context" (2009-2010) 15 CLELJ 133 at 139-40 [**UA T18**]; and Barrett & Oliphant, at 10-14 [**AA T53**].

warned against taking a decontextualized approach to freedom of association: “like all *Charter* rights, this right must be interpreted generously and purposively” and “in accordance with Canadian values and Canada’s international commitments”.[3] The meaning of freedom of association is to be "ascertained by an analysis of the purpose of [the] guarantee"; that is, it is to be understood "in light of the interests it was meant to protect".[4]

4. This Court has consistently held that freedom of association protects the "freedom to combine together for the pursuit of common purposes or the advancement of common causes", and that the freedom is concerned with "protecting individuals from the vulnerability of isolation and ensuring the potential of effective participation in society".[5] For the reasons that follow, a purposive and contextual analysis of s. 2(d) leads to the conclusion that it protects the freedom to withdraw labour collectively since this associational activity *embodies* the very interests freedom of association was intended to protect.

5. ***Freedom to strike essential to free and democratic society.*** First, the freedom to strike is an essential element in sustaining democracy, and its absence is a sign of oppression.[6] This Court has recognized freedom of association as "a *sine qua non* of any free and democratic society".[7] This Court has also recognized the trade union movement "as a fundamental institution" in society as "it is a participant in the political and social debate at the core of Canadian democracy".[8] It is precisely because the right to strike ensures that individuals have an effective means for shaping their political and socio-economic circumstances that it has been banned by totalitarian regimes and has played a significant role in transforming these regimes into democracies.[9] The freedom to strike is thus vital both to the individuals who exercise it and to the well-being of a free and

---

[3] *Fraser*, para. 28, 32 & 117 [**AA T17**]. See also *Dunmore*, para. 13 [**AA T13**].

[4] *R. v. Big M Drug Mart Ltd*., [1985] 1 SCR 295 at 344 [**AA T20**].

[5] *Alberta Reference*, para. 22 & 85-86 [**AA T25**] per Dickson CJ, and para. 146 & 150 per McIntyre J; *Dunmore*, para. 15-16 [AA T13]; *Lavigne v. OPSEU*, [1991] 2 SCR 211, para. 67-68 & 70 [**UA T4**] per Wilson J, and para. 284 per McLachlin J; *Health Services*, para. 90 [**AA T14**]; *Delisle v. Canada*, [1999] 2 SCR 989, para. 63 [**Respondent's Authorities "RA" T5**] per Cory & Iacobucci JJ (dissenting).

[6] J. Lambert, *If The Workers Took A Notion* (Ithaca: ILR Press, 2005) at p. 7 [**UA T19**].

[7] *Alberta Reference*, para. 22 [**AA T25**].

[8] *R. v. Advance Cutting & Coring Ltd*, [2001] 3 SCR 209, para. 232 [**RA T18**], per Bastarache J. (dissenting).

[9] Lambert, at 7 [**UA T19**]; *Lavigne*, para. 225-26 [**UA T4**] per La Forest J; *Alberta Reference*, para. 146, 151-52 per McIntyre J [**AA T25**].

democratic society.

6. ***Historical dimension of freedom to strike in labour context.*** Second, the fundamental nature of the freedom to strike is confirmed by its vibrant and long history in the labour relations context in Canada. The strike is "a social practice that is deeply embedded in Canadian history".[10] Prior to the *Charter* and the Wagner model of labour relations, the freedom to strike was an established social freedom which was fundamental in workers' lives. Workers enjoyed a virtually unlimited freedom to strike for collective bargaining purposes, which pre-existed the instantiation of the right to strike in statutory regimes.[11] The modern statutory limits imposed on the freedom to strike were the result of *quid pro quo* exchanges with workers for legislative protections which facilitated their freedom to organize, collectively bargain and strike.[12] Contrary to the Respondent's assertions, these statutory limits on the right to strike do not detract from the fundamental nature of the freedom.[13] Rather, labour relations legislation "merely acknowledges as a *fait accomplit* the social rights of striking and collective bargaining, established by the struggles of working people."[14]

7. ***Freedom to strike indispensable to achievement of universal aspirations.*** Third, the collective withdrawal of labour is a means of promoting many of the ideals enshrined in the *Universal Declaration of Human Rights*, including the right to just and favourable conditions of work, the right to equal pay for work of equal value, the right to social security against the consequences of illness, old age, death and unemployment, and the right to an income consistent with a life of human dignity.[15] The right to strike is thus more than an economic sanction that

---

[10] J. Fudge & E. Tucker, "The Freedom to Strike in Canada: A Brief Legal History" (2009-2010) 15:2 CLELJ 333 at 334 [**AA T62**]; *Health Services*, para. 45 *et seq*. [**AA T14**]

[11] *Ibid.* at 335-36 & 341 [**AA T62**]; G. England, at 175 [**UA T16**].

[12] Fudge & Tucker, at 334-36, 349-50 [**AA T62**].

[13] *Alberta Reference*, para. 74-75 [**AA T25**] per Dickson CJ; *Health Services*, para. 25 & 41 [**AA T14**]; Respondent's Factum, para.39. Further, the freedom to strike, like freedom of expression and other constitutional rights, is more accurately conceived of as a complex bundle of diverse rights, including claim rights, liberties and immunities. For a critique of the distinction between rights and freedoms, see: Fudge & Tucker, *ibid*., at 336-38 [**AA T62**]; and A. Bogg & K. Ewing, "A Muted Voice at Work? Collective Bargaining in the Supreme Court of Canada" (2012) 33:3 Comp. Lab. Law Pol'y J 379 at 392-400 [**UA T13**].

[14] G. England, at 175 [**UA T16**].

[15] P. Cavalluzzo & A. Telford, "Freedom of Association: How Fundamental is the Freedom?" in R. Gilliland ed., *The Charter At Thirty* (Toronto: Canada Law Book, 2012) at 68-69 [**UA T14**]. The collective withdrawal of labour serves purposes which go beyond "the fairness of wages and remunerative concerns, and extend to matters such

assists in equalizing bargaining power and that makes bargaining meaningful, as significant as these objectives are. More fundamentally, the strike is itself an *intrinsically* valuable social practice of participatory democracy, self-governance and citizenship, and a collective expression of human dignity and autonomy.

8. ***Democracy, self-governance and citizenship.*** Trade unions are established, maintained and operated in accordance with democratic principles. Workers form a community of citizens who collectively distill, define and pursue their common interests. By participating in decision-making on issues that directly impact upon their labour, and by acting in concert to protect and advance their collective interests in the workplace, workers engage in a practice of democratic self-governance in a foundational sphere of social interaction.[16] The strike thus has distinctive participatory and citizenship dimensions to it, as workers join together in solidarity and collectively assert democratic control over their working lives.[17] The collective withdrawal of labour must therefore be viewed as an intrinsically valuable exercise of democracy, self-governance and citizenship.

9. ***Human dignity and autonomy.*** Furthermore, the freedom to strike is inherently valuable as a collective expression of human dignity and personal autonomy. As stated by Professor Lambert: "The right to strike was one of the liberties that distinguished the free worker from the slave and the bondsman. Strikes were not merely instruments for improving wages and working conditions but affirmations of personal autonomy and dignity."[18] Indeed, it is the inalienable right to human dignity and autonomy over one's labour that undergirds the common law's aversion to enforcing specific performance of a contract of service.[19] The common law "never insists a person must labour for another person against her will"; rather, it "unambiguously allows each of us to refrain from working for those who are not prepared to meet such terms and conditions as we may

---

as health and safety in the work place, hours of work, sexual equality, and other aspects of work fundamental to the dignity and personal liberty of employees": *Alberta Reference*, para. 23, 90-98 [**AA T25**].

[16] Lambert, at 11-12, 189-92 [**UA T19**]; *Alberta Reference*, para. 91-98 [**AA T25**]; *Dunmore*, para. 46 [**AA T13**]; *Health Services*, para. 57 & 82 [**AA T14**]; Bogg & Ewing, at 405 [**UA T13**].

[17] Lambert, *ibid.* [**UA T19**]; see also J. Fudge, "Brave New Words" (2010) 28 Windsor YB Access Just. 23 at 48-49 [**UA T17**].

[18] Lambert, at 12 [**UA T19**].

[19] *Alberta Reference*, para. 175 [**AA T25**].

demand".[20] It follows that undue state interference with the freedom of workers to collectively withdraw their labour is tantamount to the state sanctioning compulsory labour under terms that the workers have collectively rejected as unfair or inadequate. As such, it is a direct affront to human dignity and autonomy.

10. In summary, the freedom to strike not only enhances the *Charter* values of democracy, liberty, equality, human dignity, and personal autonomy,[21] it is a collective *embodiment* of these very values. It is this feature of the freedom to strike which constitutes it as a fundamental collective activity at the *core* of freedom of association.

B. Threshold For Proving S.2d Breach Must Reflect Fundamental Nature Of Freedom

11. The Unions submit that s. 2(d) must be afforded constitutional protection consistent with its status as one of the four fundamental freedoms. A threshold of "substantial interference" or "effective impossibility" for proving a breach of s. 2(d) is inconsistent with the judicial protection afforded to all the other fundamental freedoms under s. 2 of the *Charter*. Indeed, a mere "restriction" on expressive activity is sufficient to breach freedom of expression under s. 2(b).[22] Similarly, under s. 2(a) an infringement on freedom of religion and conscience will be found if a law or government conduct "interferes" with the fundamental freedom "in a manner that is more than trivial or insubstantial".[23] To provide governments with a license to "substantially interfere" with and restrict the exercise of a fundamental freedom up to the point of "effective impossibility" is inconsistent with the liberal, purposive and generous interpretation of the *Charter* which is intended to provide unremitting protection to fundamental rights.[24]

12. Significantly, there is nothing in the wording of section 2 or in the history underlying the enactment of the *Charter* which would suggest that freedom of association is less "fundamental"

---

[20] Beatty & Kennett, at 234 [**UA T12**].

[21] *Health Services*, para. 81 [**AA T14**].

[22] *Irwin Toy Ltd. v. Quebec*, [1989] 1 SCR 927, para. 51-53 [**UA T3**].

[23] *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551, para. 57-59 [**UA T9**].

[24] Substantive *Charter* rights must be given a broad, liberal, generous, purposive interpretation and any restrictions must be imposed only under s. 1: *Big M Drug Mart Ltd.*, para. 116-17 [**AA T20**]; *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, para. 40 [**UA T1**].

than the other fundamental freedoms.[25] Indeed, it is notable that in Canada, unlike in the US, freedom of association is expressly guaranteed as a constitutional freedom. A more stringent test for its abridgment than the other fundamental freedoms suggests that freedom of association is of less importance in our constitutional framework. To find that freedom of association is only infringed when the state has "substantially interfered" with or has rendered “impossible” its exercise would bespeak a truly thin and impoverished vision of this constitutional freedom.

13. In the present appeal, the Appellants assert a right to be free from undue government interference with their freedom to strike, a quintessential "negative rights" claim. Contrary to the Respondent's assertion, the test for a breach in these circumstances ought to be that which was articulated by this Court in *Dunmore*:

> In order to establish a violation of s. 2(d), the [claimants] must demonstrate, first, that such activities fall within the range of activities protected by s. 2(d) of the Charter, and second, that the impugned legislation has, **either in purpose or effect, interfered** with these activities… .[26]

14. In the present appeal, the government has clearly targeted the right to strike precisely "*because* of its concerted or associational nature", and has "thereby "discourage[d] the collective pursuit of common goals".[27] The impugned legislation therefore interferes with an associational activity in both purpose and effect, and is in breach of s. 2(d) of the *Charter*.

C. Response To Concerns For Judicial Deference And Balance In Labour Relations

15. ***Concern for neutrality, distinction between relative value and content.*** The Unions submit that any concern for privileging one form of association over another wrongly assumes that the content of the s. 2(d) *Charter* right must be uniform across all types of associations.[28]

---

[25] *Health Services*, para. 39 [**AA T14**]; *Alberta Reference*, para. 47-50, 55 [**AA T25**]; Cavalluzzo & Telford, at 39-40, 44-45 [**UA T14**].

[26] *Dunmore*, para. 13 [**AA T13**]; Respondent's factum, para. 64 & 66. The present case is <u>not</u> about activating a government’s proactive obligation to enact facilitating legislation, as was the case in *Fraser*. Rather, this case addresses a government’s actions that restrict an existing capacity to exercise freedom of association.

[27] *Dunmore*, para. 16 & 18 [**AA T13**]; *Alberta Reference*, para. 98 [**AA T25**]. The impugned legislation only applies to unionized workers, as the individual employee is not prevented from withdrawing his or her labour.

[28] See S. White, “Trade Unionism in a Liberal State”, in A. Gutmann, ed., *Freedom of Association* (Princeton: Princeton U.P., 1998) [**UA T20**]. Professor White argues that the state ought to take a promotive stance, as opposed to a neutral stance, when it comes to trade unionism since the latter promotes instrumental goods, such as access to employment and income, which are uniformly ascribed a positive value. White notes that the principle

Uniformity for uniformity's sake has never been a touchstone of constitutional rights interpretation. Quite the opposite, the *Charter* demands a contextual analysis of each particular claim. For instance, under s. 15 of the *Charter*, the Court conducts a contextual analysis of the particular characteristics, needs and interests of the claimant group in order to ensure that substantive equality is promoted.[29] Similarly, the scope of s. 2(b) protection is interpreted with reference to the values underpinning the free speech guarantee: namely, (1) democratic discourse; (2) truth finding; and (3) self-fulfillment.[30] Significantly, determining the scope of constitutional protection on the basis of the relative *value* of an expressive or associational activity is distinct from judging the specific *content* of that activity.[31] There is nothing inherently impermissible about the courts assessing the constitutional value of particular types of expressive or associational activities. A contextual and purposive analysis, as opposed to a posture of neutrality, permits a constitutional jurisprudence that fosters associational activities and expression which contribute to the public good by enhancing the values underpinning the *Charter* as a whole.[32]

16. ***Right to lockout not equivalent to right to strike.*** Such an analysis also permits the Court to distinguish between the right to lockout and the right to strike, and to articulate in a principled manner why one warrants constitutional protection and not the other. Aside from the typically non-associational nature of the employer's right to lockout employees, the right merely serves the employer's economic interests and efficiency-based concerns and thus lacks the significant human

---

of state neutrality is presumptively appropriate in the context of the state's relationship with expressive associations, such as religious groups or other groups whose primary purpose is to propagate a certain view of the "good life" or a particular ideology. With these types of associations it is appropriate for the liberal state to adopt a position of neutrality which neither promotes nor demotes one religious ideology or version of the good life over another. See also, Bogg & Ewing, [**UA T13**].

[29] *R. v. Kapp*, [2008] 2 SCR 483, para. 15, 18-19, 27-28 [**UA T7**]; *Andrews*, para. 26 & 37 [**UA T1**]. The fact that s. 15 requires the state to extend a form of protection or a benefit to one group in society and not to another is not inherently offensive in constitutional terms.

[30] *Montreal (City) v. 2952-1366 Quebec Inc.*, [2005] 3 SCR 141, para. 72, 74-77 [**UA T5**]. The Court also considers the method and location of expression and, with respect to public or government-owned property, the historical and actual use of a particular public space for free expression. See also, *Irwin Toy*, para. 53 [**UA T3**].

[31] Bogg & Ewing, at 408-12 [**UA T13**]. After reviewing the different values ascribed to political, defamatory, pornographic, and commercial speech, the authors note: "Thus, there is a finely nuanced gradation of free speech protection in liberalism that is based upon judgments of 'relative value' of the right's exercise. Nevertheless, this still leaves scope for excluding judgments relating to the 'content' of speech." (410-11.)

[32] *Ibid.* [**UA T 13**]; and S. White, at 336-340 [**UA T20**]

rights dimension with which the right to strike is imbued.[33] Unlike the employer's right to shut down or relocate production, the right to strike directly implicates the human dignity of workers.[34] Thus, just as "the employer's freedom to impede collective bargaining would not be viewed as the symmetrical mirror image of the trade union's freedom to bargain collectively", the employer's right to lockout should not be equated with the right of workers to strike.[35]

17. Similarly, the Court's concern in *Wal-Mart* for providing a "lopsided advantage" to workers on account of s. 2(d) protecting their associational activities and not the employer's should be rejected.[36] Such a concern disregards the purpose of freedom of association and the interests it is meant to protect. As recognized by Dickson CJ in the *Alberta Reference*:

> Freedom of association is **most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or the employer . . . it has enabled those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact** and, perhaps, conflict.[37]

18. More recently this Court in *Health Services* recognized that "[o]ne of the fundamental achievements of collective bargaining is to palliate the historical inequality between employers and employees".[38] The significant connection between freedom of association and the struggle of disadvantaged groups in a profoundly unequal society should be central to the analysis of the scope of s. 2(d) and the interests it was intended to protect. Robust protection of freedom of association in the labour context is consistent with a purposive and contextual analysis of s. 2(d).

---

[33] Bogg & Ewing, at 395 & 411 [**UA T13**]; Hepple, at 139-40 [**UA T18**].

[34] Hepple, *ibid.* [**UA T18**].

[35] Bogg & Ewing, at 395 [**UA T13**]. Furthermore, modern labour legislation gives employers other economic weapons to pursue its economic interests such as the right to unilaterally change working conditions or relocate production. Canadian labour law has never considered the right to lockout to be equivalent to the right to strike.

[36] *Plourde v. Wal-Mart Canada Corp.*, [2009] 3 SCR 465, para. 57 [**RA T16**] per Binnie J.: "Care must be taken not only to avoid upsetting the balance the legislature has struck in the [Labour] Code taken as a whole, but not to hand to one side (labour) a lopsided advantage because employees bargain through their union (and can thereby invoke freedom of association) whereas employers, for the most part, bargain individually." See also Hepple, at 144-145 [**UA T18**].

[37] *Alberta Reference*, para. 87 [**AA T25**]. See also, para. 23, per Dickson CJ: "Historically, workers have combined to overcome the inherent inequalities of bargaining power in the employment relationship and to protect themselves from unfair, unsafe, or exploitative working conditions."

[38] *Health Services*, para. 84 [**AA T14**].

19. ***Deference to labour relations only relevant under s. 1.*** A policy of judicial deference in labour relations should not inform the interpretation of s. 2(d) rights under the *Charter*. Developed in the administrative law context, judicial deference in labour relations is appropriate vis-à-vis an administrative tribunal with specialized expertise that was created by the legislature to resolve matters within its jurisdiction.[39] However, its application in interpreting a fundamental freedom under the *Charter* elides a fundamental difference between administrative and constitutional judicial review. It ignores the supremacy of the *Charter* and the role of the courts in upholding the Constitution.

20. ***Sections 2(d) and 1 must remain analytically distinct***. This Court's jurisprudence clearly identifies s. 1 of the *Charter* as the appropriate stage for considering whether deference to the legislature is required.[40] Even under s. 1, courts must be careful not to abdicate their role as final arbiter of the Constitution. As stated by this Court in *UFCW v. KMart*:

> Although courts should be hesitant to strike down labour legislation, it does not follow that industrial relations are immunized from *Charter* review. **Just as in any other area where the legislature is called upon to balance competing interests on complex issues, deference should be shown to the political choices of the legislature in labour legislation. However, deference should not deter the courts from determining whether those political choices fall within constitutionally permissible parameters of reasonable alternatives.** It has been recognized that **appeals to deference based on the balance of competing interests cannot usurp the obligation of the Court to consider the justificatory requirements of s. 1** of the *Charter*. …[41]

21. Like many other social spheres in which the legislature balances competing interests, including the regulation of elections and the provision of social benefits, labour relations policy must be developed in accordance with the Constitution.[42] This includes a legislative objective that is "of sufficient importance to warrant overriding a constitutionally protected right or freedom".[43]

---

[39] *CUPE, Local 963 v. New Brunswick Liquor Corp*, [1979] 2 SCR 227 [**UA T2**]; see also P. Cavalluzzo, "The Fog of Judicial Deference" (2012) 16:2 CLELJ 369 at 369-72 [**UA T15**].

[40] *Andrews*, para. 40 [**UA T1**]; *Canada v. Bedford*, [2013] 3 SCR 1101, para. 127-28 [**AA T8**].

[41] *U.F.C.W., Local 1518 v. KMart Canada*, [1999] 2 SCR 1083, para. 63 [**AA T32**] [emphasis added]. As stated by this Court in *Health Services*, para. 26 [**AA T14**]: "Policy itself should reflect *Charter* rights and values."

[42] See, for example, this Court's analysis of elections regulation in the freedom of expression context: *R. v. Bryan*, [2007] 1 SCR 527 [**UA T6**]; and *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827 [**RA T8**].

[43] *Big M Drug Mart*, at 352 [**AA T20**].

This Court must continue to treat with "strong skepticism" economic justifications, such as costs and inconvenience, for state interference with a fundamental right or freedom.[44] As stated by Wilson J. in *RWDSU v. Saskatchewan*, "I do not doubt that economic regulation is an important government function in today's society but, if it is to be done at the expense of our fundamental freedoms, then it must, in my view, be done in response to a serious threat to the well-being of the body politic or a substantial segment of it."[45] While the state may impose reasonable restrictions on the *harmful* exercise of a right, the burden of proof rests with the government to demonstrate that the abridgment is justified in a free and democratic society. This Court's interpretation of demonstrably justified limits on *Charter* rights under s. 1 must continue to be informed by the social value of the fundamental freedom restricted and by Canada's international human rights obligations.[46]

PART III: COSTS AND ORDERS SOUGHT

22. The Unions request no order of costs be made for or against them, and that they be granted leave to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF MAY, 2014

Paul Cavalluzzo / Adrienne Telford
Lawyers for the Interveners CUPW & IAMAW

[44] *Health Services*, para. 145 [**AA T14**]: "To the extent that the objective of the law was to cut costs, that objective is suspect as a pressing and substantial objective under the authority in *N.A.P.E.* and *Martin*, indicating that "courts will continue to look with strong scepticism at attempts to justify infringements of Charter rights on the basis of budgetary constraints" …. Nor, on the facts of this case, is it clear that increasing management power is an objective that is "pressing and substantial in a free and democratic society". See also *Alberta Reference*, para. 107 & 117 [**AA T25**]; and *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177 [**UA T8**] wherein Wilson J rejected "administrative convenience" as a justification for limiting *Charter* rights. See also, Lambert, at 190 [**UA T19**], and 196-99 for an incisive response to the concern that constitutional protection of right to strike would only increase labour strife.

[45] *RWDSU v. Saskatchewan*, [1987] 1 SCR 460, para. 51 & 54 [**AA T27**] per Wilson J (dissenting).

[46] *Alberta Reference*, para. 59 [**AA T25**]. The Unions are both parties to separate *Charter* challenges respecting federal back-to-work legislation which made lawful strikes under the federal labour code illegal. Both Unions filed complaints with the International Labour Organization, which found that the members of both Unions did not perform essential services within the meaning of international law and that economic considerations should not be invoked as a justification for restrictions on the right to strike. In each case the Committee on Freedom of Association requested the federal government not to enact back-to-work legislation in a non-essential service in the future and to limit its interventions to ensuring a minimum service consistent with the principles of freedom of association. See *CUPW and Gov. of Canada*, Case No. 2894, GB. 317/INS/8 [**UA T10**], and *IAMAW and Gov. of Canada*, Case No. 2983, GB. 319/INS/10 [**UA T11**].

PART IV: TABLE OF AUTHORITIES

Description	Paragraph in Factum
Cases	
Andrews v. Law Society of British Columbia, [1989] 1 SCR 143	11, 15, 20
CUPE, Local 963 v. New Brunswick Liquor Corp, [1979] 2 SCR 227	19
Canada v. Bedford, [2013] 3 SCR 1101	20
Delisle v. Canada, [1999] 2 SCR 989	3
Dunmore v. Ontario (Attorney General), [2001] 3 SCR 1016	1, 3, 8, 13, 14
Harper v. Canada (Attorney General), [2004] 1 SCR 827	21
Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia, [2007] 2 SCR 391	1, 4, 6, 7, 8, 10, 12, 18, 20, 21
Irwin Toy Ltd. v. Quebec, [1989] 1 SCR 927	11, 15
Lavigne v. OPSEU, [1991] 2 SCR 211	4, 5
Montreal (City) v. 2952-1366 Quebec Inc., [2005] 3 SCR 141	15
Ontario (Attorney General) v. Fraser, [2011] 2 SCR 3	1, 3, 13
Plourde v. Wal-Mart Canada Corp., [2009] 3 SCR 465	17
R. v. Advance Cutting & Coring Ltd, [2001] 3 SCR 209	5
R. v. Big M Drug Mart Ltd., [1985] 1 SCR 295	3, 11, 21
R. v. Bryan, [2007] 1 SCR 527	21
R. v. Kapp, [2008] 2 SCR 483	15
Reference re Public Service Employee Relations Act (Alberta), [1987] 1 SCR 313	1, 4, 5, 6, 7, 8, 9, 12, 14, 17, 21
RWDSU v. Saskatchewan, [1987] 1 SCR 460	21

ILO Decisions

Texts and Articles

PART V: STATUTORY PROVISIONS

CONSTITUTION ACT, 1982 (80)

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

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

(c) freedom of peaceful assembly; and

(d) freedom of association.

LOI CONSTITUTIONNELLE DE 1982 (80)

PARTIE I

CHARTE CANADIENNE DES DROITS ET LIBERTÉS

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Garantie des droits et libertés

Droits et libertés au Canada

1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes :

a) liberté de conscience et de religion;

b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;

c) liberté de réunion pacifique;

d) liberté d'association.