SCC File No. 34948

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

BETWEEN:

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

APPELLANTS

-AND-

THE ATTORNEY GENERAL OF CANADA

RESPONDENT

-and-

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PART I: OVERVIEW

1. S. 96(1) of the *Royal Canadian Mounted Police Regulations*, 1988 (SOR/88-361) (the "*Regulation*") and s. 2(1)(d) of the *Public Service Labour Relations Act* S.C. 2003, c. 22, s. 2 (the "*PSLRA*"), taken together, violate s. 2(d) of the *Canadian Charter of Rights and Freedoms* by preventing members of the RCMP from choosing to associate in the meaningful pursuit of common workplace goals. That violation cannot be justified pursuant to s. 1 of the *Charter*.

2. S. 2(d) of the *Charter* protects the meaningful pursuit of common workplace goals. As stated by a majority of this Court in *Ontario (Attorney General) v. Fraser*, 2011 SCC 10 ("*Fraser*"), summarizing *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 ("*Dunmore*"):

> After *Dunmore*, there could be no doubt that the right to associate to achieve workplace goals in a meaningful and substantive sense is protected by the guarantee of freedom of association, and that this right extends to realization of collective, as distinct from individual, goals. Nor could there be any doubt that legislation (or the absence of a legislative framework) that makes achievement of this goal substantively impossible, constitutes a limit on the exercise of freedom of association. Finally, there could be no doubt that the guarantee must be interpreted generously and purposively, in accordance with Canadian values and Canada's international commitments. (para. 32)

3. The majority in *Fraser* went on to state:

> What is required is a process that permits the meaningful pursuit of these goals. No particular outcome is guaranteed. However, the legislative framework must permit a process that makes it possible to pursue the goals in a meaningful way. (para. 33)

4. S. 96(1) of the *Regulation* imposes on RCMP members an internal program named the Division Staff Relations Representation Program ("SRRP").

5. The SRRP is not independent of management, being itself a program of the RCMP. Neither it, nor any other procedure provided under the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (the "*RCMP Act*"), nor the Commissioner's Standing Orders, provides any independent means of redress of grievances and complaints that RCMP members, either individually or collectively, may have. Nor does it provide a means of negotiation or meaningful consultation about the terms and conditions of members' employment.

6. S. 2(1)(d) of the *PSLRA* defines "employee" to mean "a person employed in the public service", with the exception of, among others, "a person who is a member or special constable of

the Royal Canadian Mounted Police or who is employed by that force under terms and conditions substantially the same as those of one of its members". The effect of s. 2(1)(d) of the *PSLRA* is to deny RCMP members access to the statutory system set up to regulate collective bargaining between the Government of Canada and its employees.

7. As a result of the combined effect of the *Regulation* and s. 2(1)(d) of the *PSLRA*, the RCMP is not obliged by law to recognize the freely chosen associations created by members of the RCMP, and in fact it has refused to do so. As a result, RCMP members lack any, let alone a meaningful and substantive, opportunity to pursue common workplace goals.

8. The prohibition on RCMP members engaging in meaningful and substantive associational activities in relation to their employer is a breach of s. 2(d) of the *Charter* that cannot be saved under s. 1 of the *Charter*.

9. In particular, the asserted salutary effects of denying RCMP members any access to meaningful and substantive associational activities in relation to their work do not outweigh the detrimental effects of that prohibition. In particular, that prohibition denies RCMP members the opportunity to choose whether to join together to pursue collectively their individual and group interests, with all of the positive impacts on human dignity, liberty and autonomy that opportunity entails. RCMP officers are charged with the power and obligation to enforce the law of the land. Public confidence in the ability of police officers to enforce the law of the land fairly and appropriately would be increased by the knowledge that RCMP members themselves have access to fair and meaningful avenues of redress for workplace grievances and the opportunity to exercise in meaningful association rights in the workplace.

PART II: BCCLA'S POSITION ON THE CONSTITUTIONAL QUESTIONS

10. The Chief Justice has stated the following constitutional questions:

a. Does s. 96 of the *Royal Canadian Mounted Police Regulations*, 2988, SOR/88-361, infringe s. 2(d) of the *Charter*?

b. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?

c. Does paragraph (d) of the definition of "employee" at s. 2(1)(d) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, infringe s. 2(d) of the *Charter*?

d. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?

11. The BCCLA submits that the *Regulation* and s. 2(1)(d) of the *PSLRA*, whether taken separately or together, infringe s. 2(d) of the *Charter*, and cannot be saved under s. 1.

PART III: ARGUMENT

A. S. 2(d) of the *Charter* protects the right to associate to achieve workplace goals in a meaningful and substantive sense.

12. A majority of this Court stated at para. 33 of *Fraser*, referring to *Dunmore*, that s. 2(d) of the *Charter* requires a legislative framework that allows for a process that permits the meaningful pursuit of common goals.

13. The majority in *Fraser* explained that:

> Laws or government action that make it impossible to achieve collective goals *have the effect* of limiting freedom of association, by making it pointless. It is in this derivative sense that s. 2(d) protects a right to collective bargaining… In every case, the question is whether the impugned law or state action has the effect of making it impossible to act collectively to achieve workplace goals. (para. 46) (emphasis in the original)

14. With respect, the Court of Appeal in the decision below erred in its "derivative right" analysis of the nature of associational rights. In the decision on appeal, the Ontario Court of Appeal stated:

> Therefore, as I understand 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. (para. 111)

15. It is respectfully submitted that this Court's reference in *Fraser* to collective bargaining as a "derivative right" did not mean that in each individual case those contending for the right must show that it would otherwise be effectively impossible for them to act collectively to achieve workplace goals.

16. Rather, this Court's decision in *Fraser* was that s. 2(d) protects collective bargaining rights (albeit not a particular model of them) because those rights are necessary to uphold freedom of association. In other words, collective bargaining rights are derivative of associational rights in a general, and not a case specific, way.

17. In our respectful submission, if the decision of the Court of Appeal on this point were to be upheld, it would render effectively meaningless this Court's jurisprudence on s. 2(d) of the *Charter* and, in particular, the meaning of freedom of association in the workplace context. As summarized by a majority of this Court in *Fraser*, s. 2(d) protects "good faith bargaining on important workplace issues". Drawing on this Court's previous decision in *Health Services & Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, the elements of good faith bargaining were stated to be:

- Section 2(d) requires the parties to meet and engage in meaningful dialogue. They must avoid unnecessary delays and make a reasonable effort to arrive at an acceptable contract…;
- Section 2(d) does not impose a particular process. Different situations may demand different processes and timelines…;
- Section 2(d) does not require the parties to conclude an agreement or accept any particular terms and does not guarantee a legislated dispute resolution mechanism in the case of an impasse…;
- Section 2(d) protects only "the right … to a general process of collective bargaining, not to a particular model of labour relations, nor to a specific bargaining method". (para. 41)

18. Thus, the decision in *Fraser* is quite clear that the sense in which the right to engage in collective bargaining is derivative is that where laws or other government action make it effectively impossible to achieve collective goals they make freedom of association pointless.

19. Contrary to the decision in the Court below, an employer's obligation to engage in good faith collective bargaining is not dependent on it otherwise being effectively impossible for workers to act collectively to achieve workplace goals. Engaging in good faith collective bargaining is itself the means whereby workers' right to act collectively to achieve workplace goals is realized.

B. The *Regulation* and s. 2(1)(d) of the *PSLRA* prevent RCMP members from exercising their freedom of association in a meaningful and substantive sense.

20. The SRRP is the exclusive means through which the RCMP will discuss employment issues with its members. The SRRP is not the freely or democratically chosen representative of RCMP members. Rather, it is an internal department of the RCMP which is neither institutionally nor financially independent from the RCMP. While the RCMP may consult with

the SRRP about certain work-related matters, there is no sense in which it engages in a meaningful dialogue or makes reasonable or indeed any efforts to arrive at an acceptable contract. It does not begin to approach "a general process of collective bargaining".

21. The grievance process created under ss. 31 and 32 of the *RCMP Act*, and the Commissioner's Standing Orders on Grievances and Representation, is not an efficient, fair, independent or effective means of addressing members' grievances: *Flanagan v. Canada (Attorney General)*, 2013 BCSC 1205, [2013] B.C.J. No. 1462; and *Boogaard v. Canada (Attorney General)*, 2013 FC 267.

22. Members of the RCMP have banded together to form associations in the attempt to address workplace issues collectively. Two of those associations are the Appellants in this matter. The RCMP entirely refuses to engage with or recognize for any purpose these or any other freely chosen associations of RCMP members.

23. This is a complete denial of the associational rights of members of the RCMP. The majority in *Fraser* summarized the propositions supporting the Court's decision in *Dunmore*. Among the propositions therein summarized were that:

- The common goals protected extend to some collective bargaining activities, including the right to organize and to present submissions to the employer.
- What is required is a process that permits the meaningful pursuit of these goals. No particular outcome is guaranteed. However, the legislative framework must permit a process that makes it possible to pursue the goals in a meaningful way.
- The *effect* of a process that renders impossible the meaningful pursuit of collective goals is to substantially interfere with the exercise of the right to free association, in that it negates the very purpose of the association and renders it effectively useless…
- The remedy for the resultant breach of s. 2(d) is to order the state to rectify the legislative scheme to make possible meaningful associational activity in pursuit of common workplace goals. (para. 33) (emphasis in the original)

24. The *Regulation*, taken together with the RCMP's refusal to recognize or deal with the associations, freely chosen by members of the RCMP, renders those or any other associations members might create effectively useless, and makes it impossible for members of the RCMP to meaningfully associate in furtherance of their workplace goals.

25. In its decisions, this Court has repeatedly stated that freedom of association does not guarantee any particular model of collective bargaining. Therefore, it is accepted that if an effective mechanism for RCMP members to join together in support of their common goals were provided under some other legislative mechanism, then their exclusion from the *PSLRA* by means of s. 2(1)(d) of that statute would be constitutionally permissible. However, their exclusion from the *PSLRA*, when taken together with the effects of the *Regulation*, is unconstitutional, as members of the RCMP are thereby excluded from any meaningful avenue for the pursuit of common goals.

C. The violation of RCMP members' freedom of association is not justified under s. 1.

26. We focus our submissions under s. 1 on the question of whether the deleterious effects of the violation of RCMP members' freedom of association outweigh the salutary benefits alleged to be furthered by that violation.

27. In his factum, the Respondent Attorney General of Canada submits that the salutary effects of this legislative scheme far outweigh any deleterious effects. In particular, the Attorney General of Canada submits that the salutary effects include preventing job action such as work to rule campaigns that could affect the delivery of service, and focusing on a consultative and cooperative approach that does not risk imposing the costs of disagreement on citizens, the employees or the employer.

28. With respect, the supposed salutary effects of this legislative scheme put forward by the Attorney General of Canada are hypothetical at best.

29. Permitting members of the RCMP to engage in the meaningful exercise of collective agreement rights need not necessarily provide them with the right to strike or take other job action such as working to rule. In this connection, it is important to note that the associations themselves have said that they do not seek the right to strike. If the legislative scheme enacted to enable members of the RCMP to meaningfully exercise their associational rights were clear, as it could easily be, that they do not enjoy the right to strike, then the primary salutary effect of the current scheme asserted by the Attorney General of Canada would simply disappear.

30. Further, the assumption on which the Attorney General of Canada asserts the second salutary effect, namely that the current scheme avoids an adversarial and conflictual approach inherent in trade unions, is simply unfounded.

31. The RCMP is a paramilitary organization. The arguments generally offered against permitting RCMP members to unionize or otherwise effectively exercise their associational rights are very similar to those offered against allowing members of the military to unionize. In "Military Unionism and the Management of Employee Relations Within the Armed Forces: A Comparative Perspective", (2010) 26:4 *Int'l J Comp Lab L & Indus* 401, Lindy Heinecken summarizes and compares different approaches taken to military unionization around the world. Canada, and to a greater extent, the United Kingdom, have opposed any unionization within the military on the basis that it would undermine the chain of command, politicize the military, and lead to a breakdown in discipline and an increase in conflict. Approaches in Western Europe, however, show that unions can function effectively within the military, employing a more cooperative or integrative approach focused on problem-solving.

32. It is therefore apparent that the salutary effects of the present legislative scheme relied upon by the Attorney General of Canada are far more apparent than real.

33. On the other hand, it is respectfully submitted that the deleterious effects of preventing RCMP members from having the right to choose whether to exercise their associational rights are very real indeed.

34. This Court has frequently commented on the fundamental values that are furthered by employees having access to meaningful collective bargaining rights. For example, in *PIPSC v. Northwest Territories (Commissioner)*, 1990 CarswellNWT 48, Cory J., writing in dissent, stated:

> Whenever people labour to earn their daily bread, the right to associate will be of tremendous significance… It follows that for an employee the right to choose the group or association that will negotiate on his or her behalf with regard to those wages and working conditions is of fundamental importance. The association will play a very significant role in almost every aspect of the employee's life at work, acting as advisor, as spokesperson in negotiations, and as a shield against wrongful acts of the employer. If collective bargaining is to function properly, employees must have confidence in their representative. That confidence will be lost if the individual employee is unable to choose the association. (para. 69)

35. Justice Cory went on to state:

> The right of the individual employee to join the association of his or her choice seems to me to be of fundamental importance. It not only enables the individual to better participate in the democratic process by acting through a group, but it permits the individuals to act in concert to seek fairness in wage settlements and working conditions…(para. 72)

36. More recently, in *Health Services*, the majority of the Court stated:

> Human dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy are among the values that underly the *Charter*… All of these values are complemented and indeed, promoted, by the protection of collective bargaining in s. 2(d) of the *Charter.*
>
> The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work. (paras. 81-82)

37. The majority in *Health Services* went on to state:

> Collective bargaining also enhances the *Charter* value of equality…
>
> Finally, a constitutional right to collective bargaining is supported by the *Charter* value of enhancing democracy. Collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace… (paras. 84-85)

38. These fundamental values of equality, dignity, liberty, autonomy and democracy are harmed by prohibiting RCMP members from engaging in meaningful associational activity in the workplace. The cost to RCMP members themselves of not respecting their dignity, autonomy, liberty, equality and democratic rights should be obvious. But the public interest too is harmed by failing to afford RCMP members rights which embody the very values which they are charged, in the exercise of their lawful duties and rights in the enforcement of the law, to further. RCMP members are legally obligated to abide by the *Charter* in enforcing the law; it is fundamentally unjust that they should not equally enjoy its protections in their working lives.

39. It is not an exaggeration to say that there is a crisis of public confidence in the RCMP. The conduct of RCMP officers is under ever closer scrutiny. One thinks, for example, of the conduct of those officers involved in the tasering of Robert Dziekański at Vancouver International Airport, or the abuses alleged in the report of Human Rights Watch, *Those Who Take Us Away*, (February 13, 2013), or in the BCCLA's report, *Small Town Justice: A Report on*

the RCMP in Northern and Rural British Columbia, (2011). RCMP officers exercise powers of life and death over the citizens of Canada. It is imperative that the police officers who have such grave and weighty responsibilities placed upon them are themselves treated with respect and dignity in the workplace.

40. Regrettably, the RCMP has also been much in the public eye with respect to allegations of bullying and harassment, including sexual harassment, lodged by members against the RCMP. These problems were recognized, at least to some degree, by the Commission for Public Complaints against the RCMP in its *Public Interest Investigation into RCMP Workplace Harassment*, (February 2013). These allegations of internal wrongdoing harm both the members involved and public confidence in the RCMP as an institution.

41. There is a positive relationship between belonging to a union and job satisfaction, and that positive relationship is likely to result in a more positive work environment. Unions reduce alienation by giving members a collective say in how their work places are run. Union foster the building of social networks and social connections in the workplace which may have the beneficial effect of offering some measure of protection against the deleterious consequences of stress, especially job-related stress. Unions help build participatory skills. As stated by Patrick Flavin, Alexander C. Pacek, and Benjamin Radcliff in "Labour Unions and Life Satisfaction: Evidence from New Data" (2010) 98 *Soc Indic Res* 435:

> For a variety of reasons, belonging to a labor union may tend to increase job satisfaction… which in turn should contribute to greater overall life satisfaction for union members… Union members may feel empowered by the existence of grievance procedures that give one the ability to appeal decisions made by employers. In these ways, unions facilitate the creation of a workplace that functions through "due process" with felicitous consequences. (pp. 438-39)
>
> Labor unions not only represent the interests of their members in the machinery of the economy, but provide psychological, emotional, and group solidarity support as well. (p. 447)

42. The benefits of union membership may be particularly valuable in hazardous work environments such as policing. See John E. Baugher and J. Timmons Roberts "Workplace Hazards, Unions, and Coping Styles" (2004) 29 *Lab Stud J* 83.

43. Like begets like. It is reasonable to believe that if RCMP members were allowed the right to choose to whether to participate in their workplaces by way of the meaningful and substantive exercise of associational rights, that they would experience enhanced levels of job satisfaction, and be better prepared to interact in a respectful and appropriate manner with the citizenry they are called to serve. It is respectfully submitted that public confidence in the RCMP would be materially enhanced by the knowledge that police officers themselves are treated fairly within the RCMP and have access to the means to represent their interests collectively.

44. Perhaps, if given the right to exercise their freedom of association to choose whether to belong to a union that their employer was legally required to recognize, a majority of RCMP members would choose not to do so. The current legislative regime, however, denies them even that fundamental right to decide whether to exercise their freedom of association. Such an absolute denial of RCMP members' freedom of association cannot be justified in a free and democratic society.

PART IV: SUBMISSIONS REGARDING COSTS

45. Pursuant to the Order of Justice Lebel dated July 25, 2013, the interveners shall pay to the appellants and respondents any additional disbursements occasioned by their interventions. Beyond this, the BCCLA requests that no order for costs be made against it and seeks no costs.

PART V: REQUEST FOR PERMISSION TO PRESENT ORAL ARGUMENT

46. The BCCLA seeks leave to present ten minutes of oral argument at the hearing of the within appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 16, 2013 ________________________________

Vancouver, British Columbia LINDSAY M. LYSTER

Counsel for the Intervener, BC Civil Liberties Association

PART VI: TABLE OF AUTHORITIES

Jurisprudence	**Paragraph(s)**
Cases	
Boogaard v. Canada (Attorney General), 2013 FC 267	21
Dunmore v. Ontario (Attorney General), 2001 SCC 94 (Appellants' Book of Authorities Volume I, Tab 8)	2, 12, 23
Flanagan v. Canada (Attorney General), 2013 BCSC 1205, [2013] B.C.J. No. 1462	21
Health Services & Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27 (Appellants' Book of Authorities Volume II, Tab 11)	17, 36, 37
Ontario (Attorney General) v. Fraser, 2011 SCC 10 (Appellants' Book of Authorities Volume I, Tab 10)	2, 3, 12, 13, 14, 15, 16, 17, 18, 23
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Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10	5, 21
Articles and Reports	
Baugher, John E. and J. Timmons Roberts. "Workplace Hazards, Unions, and Coping Styles" (2004) 29 *Lab Stud J* 83.	42
Flavin, Patrick, et al. "Labour Unions and Life Satisfaction: Evidence from New Data" (2010) *Soc Indic Res* 435.	41
Heinecken, Lindy. "Military Unionism and the Management of Employee Relations Within the Armed Forces: A Comparative Perspective", (2010) 26:4 *Int'l J Comp Lab L & Indus* 401.	31
Human Rights Watch, *Those Who Take Us Away*, February 13, 2013	39
Public Interest Investigation into RCMP Workplace Harassment, (February 2013).	40

Jurisprudence	**Paragraph(s)**
Small Town Justice: A Report on the RCMP in Northern and Rural British Columbia, (2011).	39