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Supreme Court Ushers in New Era of Constitutional Protection for Labour Rights

Employment and Labor

Government

In the first month of 2015, Canada's highest court handed down three landmark decisions drawing connections among collective bargaining, the right to strike and the charter-protected rights to freedom of association and speech. These decisions have significant implications for labour relations in Canada and will inevitably have far-reaching effects for Canadian employers.

The overarching effect of these decisions is to move labour relations in Canada further away from a question of economic relationships to one of constitutional rights. Consequently, employers can likely expect more permissive treatment of unions and their membership wherever a link to freedom of association or freedom of expression is found.

The Royal Canadian Mounted Police and Meredith decisions

In *Mounted Police Association of Ontario v Canada,* the Supreme Court of Canada concluded that the right to engage in "meaningful collective bargaining free from employer control" is constitutionally protected. A majority of the Supreme Court of Canada struck down the legislation governing the Royal Canadian Mounted Police's (RCMP) labour relations regime. Although the Supreme Court of Canada ruling stopped short of endorsing a unionized workplace for the RCMP, it found the current scheme prohibited meaningful collective bargaining and thereby violated the constitutional right of RCMP members to freely associate, which includes the right to form a trade union.

In a companion case, *Meredith v. Canada*, the Supreme Court of Canada considered whether a unilateral rollback of the agreed-upon RCMP pay increases substantially interfered with the right to engage in meaningful collective bargaining. The court found that because the rollback did not preclude future consultation with the representatives of the affected employees and was consistent with similar measures by other governments since the 2008 financial crisis, there was no substantial

interference with the constitutionally protected right of freedom of association.

These two decisions interpret the scope of the right to freedom of association in the labour relations context, finding collective bargaining to entail constitutional rights while identifying circumstances where unilateral action by a government employer can be justifiable.

The Saskatchewan Federation decision

In *Saskatchewan Federation of Labour v. Saskatchewan*, the Supreme Court of Canada considered whether a public employer can unilaterally decide that services are “essential” and cannot be withdrawn by strike action. A majority of the court struck down as unconstitutional the recently enacted Saskatchewan government’s *Public Service Essential Services Act (PSESA),* under which the government could unilaterally designate which services it considers essential and which class of employees needs to continue working during a work stoppage.

The court found that the government’s unilateral authority to prevent a certain class of employees from striking impaired the right of unionized workers to engage in meaningful collective bargaining free from employer control. Such rights were found to be within the scope of Charter-protected right to freedom of association and that the PSESA could not be reasonably justified in a free and democratic society. The majority accepted that ensuring an uninterrupted delivery of essential services is a pressing and substantial objective.

However, in this instance the infringement on the right to strike could not be justified because it impaired the fundamental rights of workers more than necessary. Overall, the court found that the unilateral decision-making power granted to public employers went beyond what was reasonably required to ensure an uninterrupted delivery of essential services during a strike.

The dissenting judges in *Saskatchewan Federation*, Rothstein and Wagner JJ., noted the complex socioeconomic implications of labour-relations issues for Canadian society. In their opinion, constitutionalizing the right to strike restricts the government’s flexibility to balance the interest of workers with the broader public interest and enshrines a political understanding of the concept of “workplace justice” that favours employee interests. Their views did not win the day.

Decisions in context

These decisions build on earlier Supreme Court of Canada jurisprudence addressing constitutional guarantees of freedom of association in a labour-relations context. In the 2007 case *BC Health Services*, the Supreme Court found that the guarantee of freedom of association protected in Section 2(d) of the Charter included the right to collective bargaining, although no specific “model” of labour relations was guaranteed to employees. In the 2011 Fraser case, the Supreme Court of Canada qualified its stance on the application of the constitutional protection of freedom of association to collective bargaining and significantly narrowed the protection afforded to collective bargaining under the Charter.

The *Mounted Police*, *Meredith* and *Saskatchewan Federation* decisions suggest the pendulum could be swinging back toward the more expansive BC Health analysis and constitutionally enshrining important aspects of Canadian labour relations.

Implications for employers and Canadian labour relations

The implication of these decisions will unfold for years to come. Undoubtedly there will be more restrictions on statutorily imposed restrictions on collective bargaining rights. Statutory limitations on the right to organize will also likely be subject to greater scrutiny for their constitutionality. Governments implementing essential-services legislation will need to carefully consider whether such designations are minimally restrictive of constitutional rights to achieve their legitimate purposes. An essential-services regime that delegates, or invites collaboration on, the designation of essential services and provides for dispute arbitration may withstand constitutional scrutiny.

The implications could also go broader and more fundamentally affect Canadian labour relations jurisprudence. Where labour-relations conduct such as collective bargaining and the right to strike are viewed through a constitutional lens, any interference or impediment to exercising such rights could face constitutional scrutiny. This could permeate decision-making of labour-relations boards and tribunals, courts considering injunction applications or governments implementing new labour-relations laws. The corollary of that could be a narrower interpretation of employer rights, particularly where these economically driven rights run up against constitutionalized rights of workers.

The author wishes to thank Andrey Shamis and Marta Jankovic, articling students, for their help in preparing this legal update.

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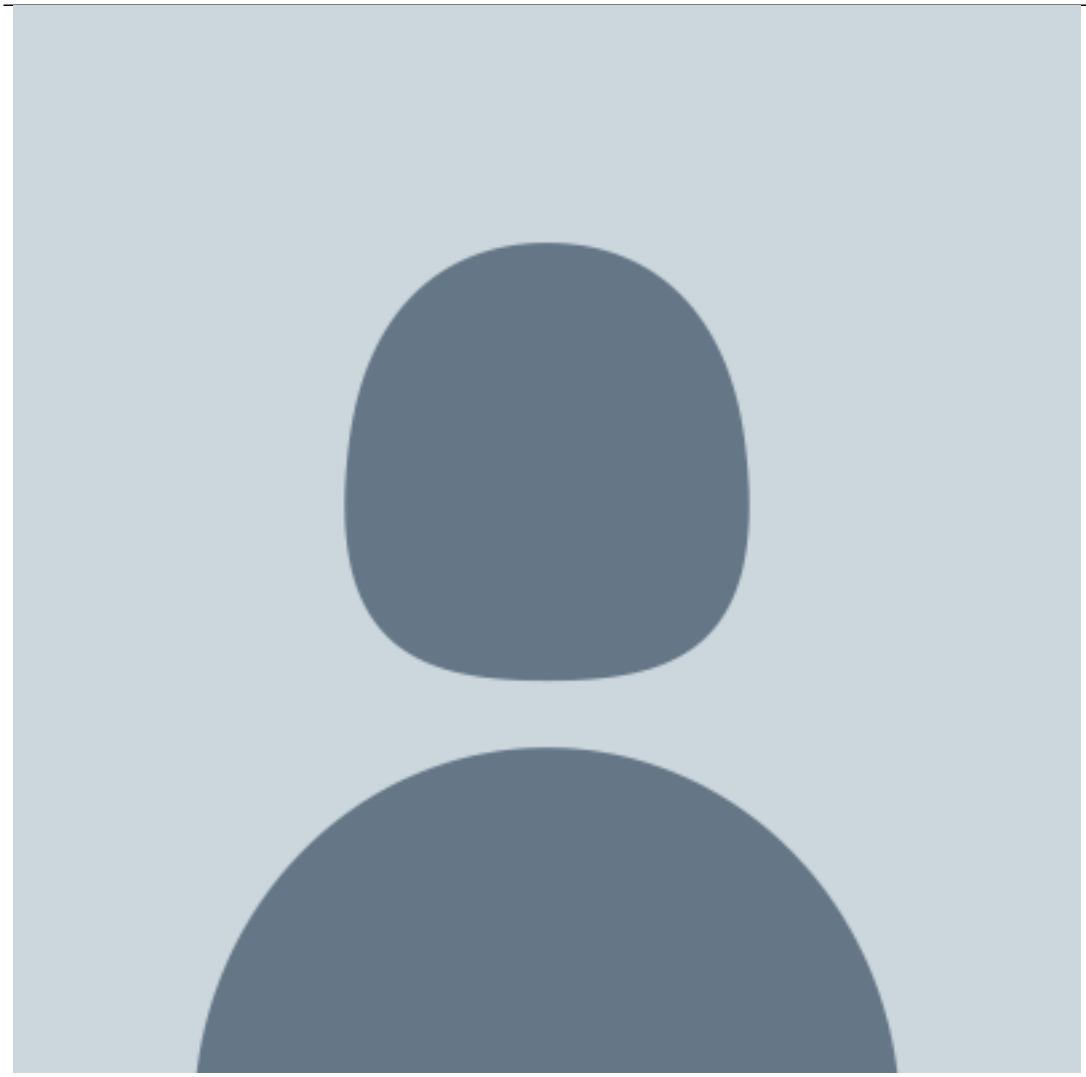

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