SUPREME COURT OF CANADA (On Appeal from a Judgment of the Ontario Court of Appeal)

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 (Respondents / Cross-Appellants)

AND

ATTORNEY GENERAL OF CANADA

RESPONDENT (Appellant / Cross-Respondent)

AND

ATTORNEY GENERAL FOR SASKATCHEWAN; ATTORNEY GENERAL OF ALBERTA; ATTORNEY GENERAL OF ONTARIO; ATTORNEY GENERAL OF BRITISH COLUMBIA; ASSOCIATION DES MEMBRES DE LA POLICE MONTÉE DU QUÉBEC; CONFÉDÉRATION DES SYNDICATS NATIONAUX; CANADIAN POLICE ASSOCIATION; CANADIAN LABOUR CONGRESS; CANADIAN CIVIL LIBERTIES ASSOCIATION; and BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENERS

FACTUM OF THE ATTORNEY GENERAL FOR SASKATCHEWAN, INTERVENER

Filed Pursuant to Rules 37 and 42 of the Rules of the Supreme Court of Canada

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PART I OVERVIEW AND FACTS

A. Overview

- 1. This appeal from the Ontario Court of Appeal's judgment in *Mounted Police Association of Ontario v. Canada (Attorney General)*¹ invites this Honourable Court to analyze and apply its reasoning in *Ontario (Attorney General) v. Fraser*² for the first time since it decided that case in April 2011.
- 2. The Attorney General for Saskatchewan ("Saskatchewan") participates in this appeal to defend the reasoning and result achieved in the lower court. Saskatchewan respectfully submits that the Ontario Court of Appeal correctly identified Fraser as "the most important authority to consider when interpreting section 2(d) not only because it is the most recent, but also because it restates the Supreme Court's conclusions in earlier cases."
- 3. Prior to Fraser, many assumed this Court's decision in Health Services and Support Facilities Subsector Bargaining Association v. British Columbia⁴ represented a "watershed" in section 2(d) jurisprudence at least in relation to its application in the labour relations context. Commentators contended and even one court⁵ held that the holding in B.C. Health Services to the effect that section 2(d) of the Canadian Charter of Rights and Freedoms (the "Charter")⁶

¹Mounted Police Association of Ontario v. Canada, 2012 ONCA 363 ("MPAO"); A.R. Volume I, Tab 16, at 94ff. ²[2011] 2 S.C.R. 3, 2011 SCC 20 ("Fraser").

³MPAO, supra n. 1, at para. 69 per Juriansz J.A.; A.R. Volume I at 107. See further: Association of Justice Counsel v. Canada (Attorney General), 2012 ONCA 530 ("AJC") at para. 22 per Sharpe J.A.; leave to appeal dismissed: 2013 CanLII 6709 (SCC). ("[W]e must take the law as stated by the Supreme Court of Canada in its most recent pronouncement on the issue in Fraser."); Appellant's Book of Authorities, Volume I, Tab 1.

⁴[2007] 2 S.C.R. 391, 2007 SCC 27 ("B.C. Health Services").

⁵Saskatchewan Federation of Labour et al. v. Her Majesty in Right of Saskatchewan, 2012 SKQB 62 at para. 71 per Ball J. Overturned on appeal, see: Saskatchewan v. Saskatchewan Federation of Labour et al, 2013 SKCA 43, leave to appeal to this Court sought: S.C.C. No. 35423.

⁶Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 2(d).

recognized a procedural right of workers to a process of bargaining collectively, over-ruled this Court's seminal rulings in the 1987 *Labour Trilogy*.⁷

- 4. However, in *Fraser* this Court rejected such an extravagant interpretation of *BC Health Services* as it extends the true effect of that case "well beyond its natural limits". Chief Justice McLachlin and Justice LeBel emphasized that *BC Health Services* disturbed neither the central holding of the *Labour Trilogy* nor its reasoning. Rather, the conclusion that a procedural right to a process for collective bargaining is constitutionally recognized, resolved a question left unanswered in the *Labour Trilogy*. As a result, *BC Health Services* should more accurately be characterized as the "high water" mark of section 2(*d*) jurisprudence, and following *Fraser* represents a place from which courts are beginning to retreat.
- 5. Saskatchewan respectfully submits that the various constitutional issues presented on this appeal can be resolved through the application of this Court's current section 2(d) jurisprudence, most notably Fraser. Respecting the Appellants' claim that the right to engage in a process of collective bargaining "without caveat" Saskatchewan submits it is defeated by Fraser. There this Court established that the scope of the right to bargain collectively under section 2(d) is rudimentary compared to the statutory labour relations regimes based upon the Wagner model currently in place throughout Canada. Rather, all that is constitutionally required is "a process of engagement that permits employee associations to make representations to employers, which employers must consider and discuss in good faith" Saskatchewan submits that the Staff Relations Representation Program ("SRRP") provided for by section 96 of the Royal Canadian Mounted Police Regulations, 1988¹³ not only satisfies this minimal constitutional requirement, it exceeds it.

⁷Indeed, in *Fraser*, three judges of this Court characterized the effect of *BC Health Services* this way: *Fraser*, *supra* n. 2, at para. 166 per Rothstein J. (Charron J. concurring) and at para. 325 per Abella J. (dissenting).

⁸ Plourde v. Wal-Mart Canada Corporation, [2009] 3 S.C.R. 465; 2009 SCC 54, at para. 56 per Binnie J.

⁹ The three cases comprising the Labour Trilogy are: Reference re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313, 1987 CarswellAlta 705, ("Alberta Reference"); PSAC v. Canada, [1987] 1 S.C.R. 424, 1987 CarswellNat 1103, and RWDSU v. Saskatchewan, [1987] 1 S.C.R. 460, 1987 CarswellSask 335.

¹⁰ See especially: Fraser, supra n. 2, at paras. 61 and 62.

¹¹Factum of the Appellants dated May 13, 2013 (Appellant's Factum"), at para. 51.

¹²Fraser, supra n. 2, at para. 99.

¹³SOR/88-361.

6. The Appellants' claim that the exclusion of members of the Royal Canadian Mounted Police (the "R.C.M.P.") from the *Public Service Labour Relations Act*¹⁴ is defeated by this Court's decision in *Delisle v. Canada (Attorney General)*¹⁵. Nothing in this Court's more recent section 2(d) jurisprudence casts doubt on the reasoning or the result in that case. Accordingly, the lower Ontario courts were correct in dismissing this particular constitutional claim. ¹⁶

B. Facts

- 7. Saskatchewan intervenes in this appeal pursuant to Rule 61(4) of the *Rules of the Supreme Court of Canada* and a Notice of Intention to Intervene filed with the Registrar of this Court dated March 25, 2013.
- 8. Saskatchewan adopts the Statement of Facts set out at paragraphs 6 to 34 in the Factum of the Respondent, the Attorney General of Canada¹⁷.

PART II

POINT IN ISSUE

A. The Constitutional Questions

- 9. The Constitutional Questions set out in the Order of the Chief Justice of Canada¹⁸ dated February 20, 2013 read as follows:
 - 1. Does s. 96 of the Royal Canadian Mounted Police Regulations, 1988, SOR/88-361, infringe s. 2(d) of the Canadian Charter of Rights and Freedoms?

¹⁵[1999] 2 S.C.R. 989.

¹⁶See e.g.: MPAO, supra n. 1, para. 142.

¹⁴S.C. 2003, c.22.

¹⁷Factum of the Respondent, the Attorney General of Canada dated July 9, 2013 (the "Respondent's Factum") at 2-34 paras 6-12

¹⁸Order of McLachlin C.J., dated February 20, 2013.

- 2. 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 Canadian Charter of Rights and Freedoms?
- Does paragraph (d) of the definition of "employee" at s. 2(1) of 3. Public Service Labour Relations Act, S.C. 2003, c. 22 infringe s. 2(d) of the Canadian Charter of Rights and Freedoms?
- 4. 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 Canadian Charter of Rights and Freedoms?

В. Position of the Intervenor

- 10. Saskatchewan respectfully submits that the Constitutional Questions stated on this appeal must be answered pursuant to the effective impossibility test delineated by this Court in Fraser. In particular, Saskatchewan submits that the Ontario Court of Appeal correctly concluded that Fraser recognizes "a positive obligation to engage in good faith bargaining will only be imposed on an employer when it is effectively impossible for the workers to act collectively to achieve workplace goals."19
- 11. Applying this standard to the Constitutional Questions, Saskatchewan submits that Questions No. 1 and No. 3 should be answered "no". Accordingly, it is not necessary for this Court to answer Questions No. 2 and No. 4.
- Alternatively, should it be necessary for this Court to resort to section 1 of the 12. Charter to resolve this appeal, Saskatchewan adopts the arguments set out in the Respondent's Factum at paragraphs 91 to 122²⁰. Accordingly in the event they must be addressed, Questions No. 2 and No. 4 should be answered "yes".

¹⁹MPAO, supra n. 1, at para. 111.

Respondent's Factum, at 29-37, paras. 91-122.

PART III

ARGUMENT

A. Relevant General Principles

13. Prior to addressing the Constitutional Questions stated by the Chief Justice, Saskatchewan submits it is useful to set out relevant general principles which should assist this Court in resolving those questions.

1. A Purposive Interpretation of Section 2(d)

- 14. Fraser helpfully endorsed earlier jurisprudence which held that "the core protection of section 2(d) focuses on the right of individuals to act in association with others to pursue common objectives and goals." In that case this Court reaffirmed the following four interpretative propositions identified in its prior section 2(d) jurisprudence, principally the Labour Trilogy:
 - Protects the freedom to establish, belong to and maintain an association.
 - Does not protect an activity solely on the ground that the activity is a foundational or essential purpose of an association.
 - Protects the exercise in association of the constitutional rights and freedoms of individuals.
 - Extends to collective, as distinct from individual, goals.²¹
- 15. It is apparent that this Court's interpretive approach to section 2(d) is more restrained than the expansive reading it gives to freedom of expression, for example, which is guaranteed under section 2(b) of the *Charter*. Saskatchewan offers two reasons for why this restrained interpretation given to the constitutional guarantee of freedom of association is appropriate.
- 16. First, associational activity in this country is very highly regulated with labour relations perhaps being the best illustration of this reality. Throughout Canada there exists an extensive statutory infrastructure governing all aspects of labour relations. These various statutes emulate the *Wagner Act* from the United States. Yet, not all lawful activities undertaken in

²¹See especially: Fraser, supra n. 2, at paras. 22 and 62.

concert are constitutionally protected. Were section 2(d) given such a broad reading this would effectively constitutionalize these statutory labour relations regimes with the result that governments would have to defend under section 1 of the *Charter*, each and every legislative revision to such a regime. Saskatchewan submits that this Court plainly rejected such a result in *Fraser*.²²

- 17. Second, a purposive reading of section 2(d) must accommodate the complex and delicate balance legislatures seek to achieve among the interests of labour, management and the public in the field of labour relations especially in the context of public services. As McIntyre J. asserted in the *Alberta Reference*: "Care must be taken then in considering whether constitutional protection should be given to one aspect of this dynamic and evolving process while leaving the others subject to the social pressures of the day."²³
- 18. Saskatchewan submits that the Ontario Court of Appeal properly adopted this Court's interpretive approach to section 2(d). This approach is incompatible with the Appellants' argument that the constitutionally protected right to a meaningful process guaranteed by section 2(d) encompasses a process that is carried out by an independent association of the employees' choosing.

2. The Analytical Framework

19. The Appellants assert that both *Fraser* and *B.C. Health Services* recognize a right under section 2(d) to engage in a process of collective bargaining "without caveat" Saskatchewan rejects this assertion as it finds no support in the jurisprudence. For example, in *B.C. Health Services* this Court identified a "limited right" to collective bargaining within section 2(d). It is only a "right to a general process of collective bargaining" that is

²² Fraser, supra n. 2, at paras. 44, 45 and 47 per McLachlin C.L. and LeBel J. and para. 299 per Deschamps J. See further: Procureur Général du Québec v. Confédération des Syndicats Nationaux et al., 2011 QCCA 1247 ("CSN, 2011"), at para. 88; leave to appeal dismissed: 2012 CanLII 25155 (S.C.C.).

²³Alberta Reference, supra n. 9, at para. 183 per McIntyre J. See also: Delisle, supra n. 14, at para. 126 per Cory and Iacobucci JJ. (dissenting).

²⁴Appellants' Factum, *supra* n. 11, at 13, para. 36.

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constitutionally recognized, and not a right "to a particular model of labour relations, nor to a specific bargaining method." Furthermore, *B.C. Health Services* held that the right is procedural and not substantive, and "does not guarantee a certain substantive or economic outcome".²⁵

- 20. Fraser clarified its earlier holding emphasizing that the scope of the right to bargain collectively under section 2(d) is far more rudimentary than the statutory collective bargaining regimes based upon the Wagner model currently in place throughout Canada. All that is constitutionally demanded is "a process of engagement that permits employee associations to make representations to employers, which employers must consider and discuss in good faith"²⁶.
- 21. Indeed, Saskatchewan endorses the view of the Québec Court of Appeal in *Procureur Général du Québec v. Confédération des Syndicats Nationaux et al.* that *Fraser* provides "many, valuable clarifications regarding the meaning of [BC Health Services]"²⁷. CSN, 2011 accepted *Fraser* as a clear signal from this Court that the effect of BC Health Services was far more modest than many lower courts and labour relations tribunals had interpreted it to be, most notably the Ontario Court of Appeal in *Fraser* itself. As a result Saskatchewan submits that post-*Fraser* it is apparent the constitutionally protected right to a meaningful process of collective bargaining under section 2(d) is not so elastic as to demand that a public sector employer must bargain with every autonomous association chosen by its employees.

3. The Applicable Test Under Section 2(d)

22. In *Fraser*, this Court reformulated the test for determining whether in the labour relations context, a violation of section 2(d) has been demonstrated, namely the test of 'effective impossibility'. In paragraph 46, for example, McLachlin C.J. and LeBel J. stated that: "In every case, the question is whether the impugned law or state action has the <u>effect of making it</u>

²⁵BC Health Services, supra n. 4, at para. 91

²⁶Fraser, supra n. 2, at para. 99

²⁷CSN, 2011, supra n. 22, at para. 2.

<u>impossible</u> to act collectively to achieve workplace goals."²⁸ Later in their joint opinion, McLachlin C.J. and LeBel J. framed the appropriate inquiry this way:

The essential question is whether the [Agricultural Employees Protection Act ("AEPA")] makes meaningful association to achieve workplace goals effectively impossible, as was the case in Dunmore. If the AEPA process, viewed in terms of its effect, makes good faith resolution of workplace issues between employees and their employer effectively impossible, then the exercise of the right to meaningful association guaranteed by section 2(d) of the Charter will have been limited and the law found to be unconstitutional in the absence of justification under s. 1 of the Charter. The onus is on the farm workers to demonstrate that the AEPA interferes with their s. 2(d) right to associate in this way.²⁹

- 23. Saskatchewan submits that the 'effectively impossible' standard identified and applied in *Fraser* is more stringent than the 'substantial interference' standard first announced in *BC Health Services*. To be sure, the constitutionally offensive provisions in *BC Health Services* nullified certain collective agreement terms and wholly prohibited negotiating similar terms in future rounds of collective bargaining. The effect of those impugned laws was to make it impossible for the union ability to achieve such terms again. Put another way, in *BC Health Services* substantial interference and effective impossibility amounted to the same thing.
- 24. In Meredith and Roach representing the Royal Canadian Mounted Police v. Canada (Attorney General)³⁰, for example, Dawson J.A. after reviewing B.C. Health Services and Fraser concluded that the Expenditure Restraint Act³¹ "did not substantially interfere with the process by which members of the RCMP pursue their associational activity because the ERA did not make it impossible for members of the RCMP to act collectively to achieve workplace goals."³² The ERA was accordingly found not to violate the claimants' right to freedom of association.
- 25. Saskatchewan submits further that notwithstanding the nature of the constitutional claim advanced, namely whether it involves the 'positive or negative right' component of section 2(d),

²⁸Fraser, supra, n. 2 at para. 46 (emphasis added).

²⁹Ibid., at para. 98 (emphasis added).

³⁰ Meredith and Roach representing the Royal Canadian Mounted Police v. Canada (Attorney General), 2013 FCA 112 ("Meredith").

³¹Expenditure Restraint Act, S.C. 2009, c.2, s.393 ("ERA").

³²Meredith, supra n.30, at paras, 90, 91.

the "effectively impossible" test applies. The applicable constitutional standard should not fluctuate depending upon the particular constitutional claim at issue. In *Association of Justice Counsel v. Canada (Attorney General)*³³, for example, Sharpe J.A speaking for the Court explained:

In my view, the substantive content of s. 2(d) must be the same whether raised as a sword to claim the positive right to an effective legislative regime to protect freedom of association or used as a shield to defend against legislation that impinges upon existing statutory protections. It follows that the "effectively impossible" test applies to this case.³⁴

26. Accordingly, Saskatchewan submits that the lower court in this case correctly identified and applied the relevant constitutional standard.

4. The Derivative Right to a Process of Collective Bargaining

27. In Fraser, this Court employed its earlier decision in Ontario (Public Safety and Security) v. Criminal Lawyers Association³⁵ to demonstrate that the right to a process for employees to bargain collectively with their employer is not a 'stand-alone' right. Rather, it is a right derivative of the fundamental freedom of association guaranteed in section 2(d) of the Charter. This derivative right as affirmed by the Ontario Court of Appeal in MPAO held that the right "arises only in circumstances where it is a 'necessary pre-condition' to the exercise of the fundamental freedom itself."³⁶

28. Saskatchewan submits that the Ontario Court of Appeal was correct to highlight, at paragraph 120 of its judgment, that a government employer is obligated to engage in collective

³³AJC, supra n. 3. See further: Fraser, supra n. 2, at para. 47:

[&]quot;What is protected [under section 2(d)] is associational activity, not a particular process or result. If it is shown that it is impossible to meaningfully exercise the right to associate <u>due to substantial interference by a law (or absence of laws: see *Dunmore*) or by government action, a limit on the exercise of the s. 2(d) right is established, and the onus shifts to the state to justify the limit under s. 1 of the Charter." [Emphasis added.]</u>

³⁴AJC, ibid., at para. 22.

³⁵[2010] 1 S.C.R. 815, 2010 SCC 23.

³⁶MPAO, supra n. 1, at para. 108; A.R. Volume I, Tab 16, at 113.

bargaining "only when the employees are able to claim the derivative right under section 2(d)."³⁷ Properly invoking *Fraser*, the Ontario Court of Appeal held employees are able to claim the derivative right upon demonstrating that the exercise of the fundamental freedom of association is "effectively impossible".

5. Conclusion on Relevant General Principles

- 29. Fraser states unequivocally that section 2(d) does not guarantee a particular model of labour relations or a specific collective bargaining method. Saskatchewan submits that it follows from this that statutory and common law underpinnings for the many and various activities undertaken by employees throughout the collective bargaining process do not enjoy constitutional recognition. The fact that the common law or the legislature may afford enhanced protection for these activities does not transform them into constitutionally protected rights.³⁸
- 30. Saskatchewan submits that this brief review of general principles relevant to this appeal demonstrate that the lower court did not err in identifying those principles. In the two sections which follow, Saskatchewan will submit that the Ontario Court of Appeal did not err in the application of those principles.

B. The First Constitutional Question

31. The First Constitutional Question stated by the Chief Justice asks whether the SRRP created by section 96 of the Royal Canadian Mounted Police Regulations³⁹ comports with the minimal requirements of section 2(d) of the Charter. The Appellants contend that it does not. Their principal claim is that because the SRRP lacks the independence and autonomy of a certified bargaining agent under the traditional Wagner model of labour relations, section 2(d) is

³⁹Supra n. 13.

³⁷*Ibid.*, at para. 120; A.R. Volume I, Tab 16, at 114.

³⁸See especially: R. v. Kuldip, [1990] 3 S.C.R. 618, at para. 37 per Lamer C.J. ("The Charter aims to guarantee that individuals benefit from a minimum standard of fundamental rights. If Parliament chooses to grant protection over and above that which is enshrined in our Charter, it is always at liberty to do so.")

plainly infringed. This equating of the constitutionally recognized process of bargaining collectively with collective bargaining under the traditional Wagner labour relations model is a *leit-motif* throughout the Appellant's Factum.

Saskatchewan submits that while an <u>independent</u> employee association may appear to enhance the effectiveness of any representations it makes to the employer, it is not essential in order to satisfy the constitutional minimum standard laid down in *Fraser*. As noted earlier, all that is needed to comply with section 2(d) of the *Charter* is "a process of engagement that permits employee associations to make representations to employers, which employers must consider and discuss in good faith" The lower court clearly understood this distinction as is evident from paragraph 128 of its judgment:

No doubt the SRRP lacks the attributes of a Wagner model bargaining representative. The SRRP is not institutionally independent. The RCMP members have never had the opportunity to choose a bargaining agent in a Wagner labour regime, and the SRRP is created by regulation (though the formation of its predecessor, the DSSR, was endorsed in a referendum). The question at [the rights infringement] stage, though, is not whether the SRRP should be regarded as an adequate alternative to a collective bargaining agent in the traditional "labour relations model". Rather the question is whether the legislative framework makes it effectively impossible for the workers to act collectively to pursue workplace issues in a meaningful way. ⁴¹

- 33. Indeed, the findings of fact made by the application judge at first instance and accepted by the Ontario Court of Appeal show "extensive collaboration between the elected SRRs and management" which means "that it is not impossible for the RCMP members to associate to achieve collective goals". This satisfies the minimum requirement under section 2(d) of the *Charter* as identified in *Fraser*.
- 34. More recently in *Meredith*⁴³ the Federal Court of Appeal outlined the "salient features of the current RCMP labour relations scheme"⁴⁴. The various features enumerated by Dawson

⁴⁰Fraser, supra n. 2, at para. 99.

⁴¹MPAO, supra n. 1, at para. 128 (emphasis added); A.R., Volume I, Tab 16, at 115.

⁴²*Ibid.*, at para. 131; A.R., Volume I, Tab 16, at 115.

⁴³Supra n. 30.

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J.A. demonstrate that the SRRP makes representations on behalf of the members of the R.C.M.P.

which the Commissioner at the very least must consider in good faith. Saskatchewan submits the

current labour relations regime governing the R.C.M.P. mandates an effective regime which

operates on good faith on the part of both the employees and the employer. Fraser demands

nothing more.

35. Finally, Saskatchewan endorses the arguments on the First Constitutional Question

found at paragraphs 43 to 52 of the Respondent's Factum.

36. Accordingly, Saskatchewan respectfully submits that the First Constitutional Question

should be answered "no". As a result it not necessary for this Court to address the Second

Constitutional Question.

C. **The Third Constitutional Question**

37. The Third Constitutional Question stated by the Chief Justice asks whether excluding

members of the R.C.M.P. from the Public Service Labour Relations Act⁴⁵ ("PSLRA") infringes

section 2(d). This question effectively invites this Court to reconsider Delisle v. Canada. The

lower court determined that Delisle was dispositive of this question. 46 Saskatchewan agrees with

this holding for three reasons.

38. First, no substantive development has occurred in the section 2(d) jurisprudence which

casts doubt on the correctness of Delisle. The statutory provision impugned in Delisle was the

predecessor to section 2 of the PSLRA which even the Appellants concedes was "essentially

identical" to it. 47 Accordingly, the holding in *Delisle* should apply with equal force here.

44 *Ibid.*, at para. 81.

⁴⁵S.C. 2003, c.22.

⁴⁶MPAO, supra n. 1, at para. 142; A.R., Volume I, Tab 16, at 117.

⁴⁷Appellants' Factum, *supra* n. 11, at 35, para. 104.

39. Second, excluding members of the R.C.M.P. from the Wagner labour relations model established in the *PSLRA* does not violate either *BC Health Services* or *Fraser*, authorities decided subsequent to *Delisle*. In both of those cases, this Court stated unequivocally that section 2(d) does not guarantee access to a particular model of labour relations let alone a specific collective bargaining scheme.⁴⁸ The following conclusion of the Québec Court of Appeal in *CSN*, 2011 is particularly apposite to this question:

Since *Dunmore*, freedom of association has guaranteed the right to have access to a union scheme (of some kind). But *Fraser* shows that this does not extend to the right to have access to a certification scheme (let alone to a particular certification scheme).⁴⁹

- 40. Clearly, access to the Wagner labour relations model provided to most other federal public sector employees through the *PSLRA* is not a constitutional entitlement under section 2(d).
- 41. Third, the SRRP enables members of the R.C.M.P. collectively to pursue workplace issues with their employer in a meaningful way. As outlined above, this is all that is needed to comply with section 2(d). As submitted in the previous section, the SRRP enables members of the R.C.M.P. to achieve that goal and thereby it satisfies the minimum constitutional requirement.
- 42. Accordingly for these reasons, Saskatchewan respectfully submits that the Third Constitutional Question should be answered "no". As a result it is not necessary for this Court to address the Fourth Constitutional Question.

D. The Second and Fourth Constitutional Questions

43. If, contrary to the foregoing submissions, this Court concludes that the Second and Fourth Constitutional Questions must be answered then Saskatchewan adopts the arguments set

⁴⁸Fraser, supra n. 2, at para. 41(referencing BC Health Services, supra n. 4, at para. 91), and para. 47.

⁴⁹CSN, 2011, supra n. 22, at para. 93.

out in the Respondent's Factum at paragraphs 91 to 122⁵⁰. Accordingly, these constitutional questions should be answered "yes".

PART IV

COSTS

44. Saskatchewan does not seek costs and submits it is not liable for costs.

⁵⁰ Respondent's Factum, *supra* n. 17, at 29-37, paras. 91-122.

PART V NATURE OF ORDER SOUGHT

- 45. Saskatchewan respectfully submits that this Court should affirm the analysis and holding of the Ontario Court of Appeal in this case and answer the Constitutional Questions in the manner proposed in paragraph 11 above.
- 46. Saskatchewan requests permission to present 10 minutes of oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Regina, Saskatchewan, this 12th day of August, 2013.

Graeme G. Mitchell, Q.C.

Counsel for the Intervenor, the Attorney General for Saskatchewan

PART VI

LIST OF AUTHORITIES

Cases	Paragraph(s)
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Legislation

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

Expenditure Restraint Act, S.C. 2009, c.2, s.393

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