

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

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-

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SERVICE ALLIANCE OF CANADA, and BRITISH COLUMBIA CIVIL LIBERTIES
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Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*

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PART I: OVERVIEW AND STATEMENT OF FACTS

1. This case concerns the freedom of RCMP members to associate and pursue their workplace goals collectively. The Appellants challenge the constitutional validity of s. 96 of the *Royal Canadian Mounted Police Regulations*, 1988 (“*Regulation 96*”) and s. 2 (1) (d) of the *Public Service Labour Relations Act* (“*PSLRA*”). The Appellants contend that the impugned legislation and government action prevents them from engaging in collective bargaining through their own independent association, thereby infringing on their freedom of association as guaranteed under s. 2(d) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). The intervener Association des membres de la Police Montée du Québec Inc. (“*AMPMQ*”) supports the appeal and argues that the impugned legislation and government action violate freedom of association by denying independent RCMP members’ associations the right to represent their members, and by interfering with RCMP members’ freedom of association through the use of unfair labour practices.

2. The *AMPMQ* is the independent employee association formed by members of the Royal Canadian Mounted Police (“*RCMP*”) that includes the majority of RCMP members in Quebec, as well as French speaking members across Canada. The *AMPMQ* is the successor to the independent RCMP member associations that have sought to represent their members in their relationship with the employer for decades. The RCMP and the employer have consistently refused to recognize those independent associations, refused to allow the associations to represent their members and refused to bargain with them in good faith, or at all. As well, the employer has actively interfered in the formation and operation of the associations through the use of unfair labour practices. The *AMPMQ* was intervener in first instance and in appeal.

PART II: *AMPMQ*’s POSITION ON THE QUESTIONS IN ISSUE

3. The *AMPMQ* supports the Appellant’s position that *Regulation 96* and the exclusion of RCMP members from the *PSLRA* violate freedom of association.

PART III: STATEMENT OF ARGUMENT

A. The right to have an independent association recognized and represent its members

4. In *Delisle* the majority held that RCMP members had a right to be represented by their associations, but that the employer was under no duty to recognize those associations.¹

5. It is difficult to conceive, in the labour relations context, that associations the employer can refuse to recognize and deal with would be able to represent their members in their relationship with that employer. In the first instance, MacDonnell J. (relying on post-*Delisle* jurisprudence) declared “RCMP management has a constitutional obligation to recognize associations for that purpose. The core issue in this application is whether management has refused to honour that obligation.”²

6. The AMPMQ’s request for recognition by the employer in order to represent its members and the denial of that request were pivotal issues in first instance.³

7. The Court found that denying the AMPMQ recognition and requiring RCMP members to deal with management through the management controlled entity of the Staff Relations Representative Program (the “SRRP”), as opposed to through their association, constituted a substantial interference with freedom of association.

8. The AMPMQ respectfully submits that the denial of recognition of an employee association and the refusal to allow it to represent its members in the labour relations context is tantamount to denying its existence. The effect of this denial is compounded by the imposition of the SRRP, which allows management to control the "representation" of RCMP members. The members of the AMPMQ are forced to participate in the SRRP, which is used by management to prevent representation of RCMP members by their own independent associations, and to retaliate against RCMP members who are active in forming independent associations.

¹ *Delisle vs. A.G. Canada* [1999] 2 SCR 989 (“*Delisle*”), para 28 and following [Book of Authorities “BA” Tab 2]

² *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2009 CanLII 15149 (ON SC), para 10, “*MPAO*” [Appellant’s Record “AR” Vol 1, Tab 3]

³ *Ibid*, at para 59 [AR Vol 1, Tab 3]

9. The AMPMQ's submissions regarding the denial of freedom of association, resulting from forcing members into an "association" not of their choosing (the SRRP), also contributed to the *ratio decidendi* of the judgement in the first instance.⁴

10. Ultimately, the Court found that management's insistence on dealing with members only within the structure it imposed "...denies members of the RCMP the freedom to form an independent association."⁵

11. The effective reversal of this decision in appeal is unfounded and contrary to the majority decision in *Delisle* which held that the "...employee organization must be a genuine employee association that management does not control. Otherwise there would be a violation of 2(d)".⁶

12. In *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*⁷, this Court cited with approval principle H of the International Labour Organization's (ILO) principles concerning collective bargaining, which states: "The principle of good faith in collective bargaining implies recognizing representative organizations."⁸

13. When the state as employer imposes a system that permits it to ignore employee associations, prevents associations from representing their members, and allows it to refuse to engage in good faith bargaining with employee associations, the collective exercise of freedom of association through an independent association is denied. The fact that members have been able to form associations through their individual exercise of freedom of association does not remedy the denial of the collective exercise of freedom of association that occurs when the association is denied recognition and cannot represent its members, as was recognized in *L'Écuyer c. Côté et al.* concerning agricultural workers in Quebec excluded from the otherwise applicable collective bargaining regime.⁹ Furthermore, the imposition of a management controlled representative system does not remedy the violation of freedom of association that occurs through denying members the right to be represented by an association of their choice.

B. The right to be free from unfair labour practices

⁴ *Ibid*, para 65 [AR Vol 1, Tab 3]

⁵ *MPAO*, para 75 [AR Vol 1, Tab 3]

⁶ *Delisle* para 37 [BA Tab 2]

⁷ *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 SCR 391 "*Health Services*" [BA Tab 3]

⁸ *BC Health Services* para 98 [BA Tab 3]

⁹ *L'Écuyer c. Côté et al.*, 2013 QCCS 973, paras 83 forward [BA Tab 4].

14. In *Delisle* the majority held that “If RCMP management has used unfair labour practices with the object of interfering with the (association)” they could be challenged under 2(d) of the *Charter*.¹⁰ The AMPMQ argued in the Court of Appeal for Ontario that management interference with the independent associations constituted unfair labour practices in violation of s. 2 (d), however that court overturned the lower Court, and relied on *Ontario (Attorney General) v. Fraser*¹¹ to find:

*[A] constitutionally protected right must exist before practices can be found to unfairly interfere with it. If the associations have no constitutional right to demand that RCMP management recognize and negotiate with them, practices that hinder them from doing so cannot rise to the level of constitutional violations.*¹²

15. The Court of Appeal for Ontario erred in denying the right of RCMP members to challenge unfair labour practices by relying on s. 2 (d), which right was recognized in *Delisle*.¹³ The argument that the right to collective bargaining is merely a “derivative right” is no answer to the direct violation of freedom of association manifest in unfair labour practices and “union-breaking”.

16. Members of the RCMP are vulnerable and have been subject to interference and reprisals by management for exercising their freedom of association.¹⁴ Notably, the employer has used the SRRP to exercise reprisals against those members active in forming independent associations. RCMP policy governing the SRRP requires members to confess associational activity under threat of disciplinary action.¹⁵ Confession of associational activities by members leads to exclusion from participation in the SRRP and a total lack of representation for the RCMP members who have chosen an independent association, and want that perspective reflected in the system of forced representation.¹⁶ As well, RCMP members active in forming independent associations have been excluded from the RCMP legal fund.¹⁷ This is further evidence of the isolation and total denial of representation for those RCMP members who seek recognition for an independent employee association. For years, RCMP management has

¹⁰ *Delisle*, at para 32 [BA Tab 2]

¹¹ *Ontario (Attorney General) v. Fraser*, 2011 SCC 20 [2011] 2 SCR 3 (“*Fraser*”) [BA Tab 5]

¹² *Mounted Police Association of Ontario v. Canada*, 2012 ONCA 363, para 140 [AR Vol. 1, Tab 16]

¹³ *Delisle*, at para 37 [BA Tab 2]

¹⁴ *Delisle* at para 106 [BA Tab 2], and *Delisle* affidavit, AR Vol 7, paras 27-56

¹⁵ *Delisle* affidavit, AR Vol. 7, para 32

¹⁶ *Delisle* affidavit, AR Vol. 7, para 43 and following

¹⁷ *Delisle* affidavit, AR Vol. 7, para 36

pursued a campaign of reprisals against Gaétan Delisle for his leadership in forming independent RCMP member associations.¹⁸ If the decision of the Court of Appeal for Ontario stands, members of the RCMP will continue to be left without recourse against such violations.

17. Such a result would be inconsistent with this court’s definition of substantial interference with freedom of association, which encompasses “laws or actions that can be characterized as ‘union breaking’.”¹⁹ In a system where the state as employer can set the rules allowing it to engage in “union-breaking”, substantial interference with freedom of association is given free rein.

18. The impugned legislation and unfair labour practices have made it impossible for RCMP members to act collectively to achieve workplace goals through their own independent associations.

C. The Narrow interpretation of Freedom of Association applied in Delisle

19. In the *Delisle* case, where the president of the AMPMQ first challenged the exclusion of RCMP members from the *Public Service Staff Relations Act* and Part 1 of the *Canada Labour Code* which provides for protection from unfair labour practices and representation by independent associations, Bastarache J. writing for the majority found that the outcome of that case had largely been determined by the three cases of the 1987 “*Trilogy*”.²⁰

20. This Court has since recognized in *BC Health Services* that the narrow definition given to freedom of association in the *Trilogy* had the effect of overlooking “the importance of collective bargaining – both historically and currently – to the exercise of freedom of association in labour relations.”²¹

21. Defining freedom of association, in the labour relations context, the majority in *Delisle* stated that “only the establishment of an independent employee association and the exercise in association of lawful rights of its members are protected under 2 (d).”²² This case provides an occasion to reconsider the narrow concept of freedom of association applied to RCMP members

¹⁸ Delisle affidavit, AR Vol. 7, para 34 and following

¹⁹ *Health Services*, *supra*, para 92 [BA Tab 3]

²⁰ *Delisle*, para 11 [BA Tab 2]

²¹ *Health Services* para 30 [BA Tab 3]

²² *Delisle*, para 11 [BA Tab 2]

in that case. By focusing on individual rights the majority in *Delisle* overlooked the importance of the collective exercise of freedom of association through the RCMP member associations themselves, effectively making RCMP members second class citizens that do not enjoy the same rights as all other citizens.

22. Going on to apply this limited definition to members of the RCMP, the majority in *Delisle* held that “all freedom of association implies is that the existing mechanisms are as open to independent employee associations as to individual members.”²³ By unduly restricting the concept of freedom of association, in the labour relations context, to individual rights exercised in association, the majority failed to recognize the importance of collective bargaining to the collective exercise of freedom of association through RCMP member associations. This overlooks the importance of the concerted or associational nature of the collective exercise when the association seeks to engage with the employer on behalf of its members.

23. According to *Health Services* “s. 2 (d) does not apply solely to individual action carried out in common but also the associational activities themselves.”²⁴ Thus, this Court in *BC Health Services* determined that collective bargaining was part of the protected scope of freedom of association in the labour relations context. That associational activity can only occur where the employer recognizes and engages with the representative associations. The impugned legislation and the interpretation of rights offered by the Court of Appeal, allows the employer to ignore representative associations and refuse to acknowledge those Charter rights. The employer has specifically refused to recognize the AMPMQ and refused to allow it to represent its members, relying on the impugned legislation and insisting that members be represented solely by the SRRP.²⁵

24. Consideration of freedom of association in the present case requires a contextual analysis that takes into account the RCMP workplace and the norms recognised in labour relations in Canada, both in the public service and in police forces, that have resulted in the comprehensive labour relations scheme from which RCMP members are excluded.

²³ *Delisle*, para 36 [BA Tab 2]

²⁴ *Health Services*, para 89 [BA Tab 3]

²⁵ *MPAO*, para 59 [AR Vol 1, Tab 3]

25. In the federal public service it has long been recognised that the right to form associations free from unfair labour practices, to have these associations formally recognised and to engage in collective bargaining with the government employer is the norm, hence the need for the employer to exclude RCMP members from the applicable legislation in order to deny those rights and thereby keep RCMP members vulnerable to unfair labour practices and “union breaking”.

26. As well, the members of all other police forces in Canada have the right to form associations free from unfair labour practices, to have their associations formally recognised and to engage in collective bargaining and nothing in the particular workplace of RCMP members sets them apart, for the purposes of collective bargaining, from their colleagues in other police forces.²⁶

27. The *PSLRA* and the *Canada Labour Code* (the “Code”) provide workers with comprehensive labour relations systems that recognize the right to form associations free from unfair labour practices, formal recognition of independent associations, collective bargaining, and enforcement of the duty to bargain in good faith, while ensuring the provision of essential services despite any disagreement between the parties.²⁷ In contrast, the impugned legislation and government action has resulted in a denial of the recognition of employee associations, forced “representation” through a management imposed process, and no collective bargaining whatsoever, much less bargaining done in good faith.

28. In *Health Services* this Court held that the freedom of association guaranteed by s. 2 (d) of the *Charter* includes a right to a process of collective bargaining. The narrow interpretation of freedom of association offered by the majority in *Delisle* cannot be sustained in light of *Health Services*, as reinforced in *Fraser*. RCMP members must now be recognized as entitled to the full ambit of freedom of association, including the right to engage in a process of collective bargaining, without caveat.

D. Section 1 of the Charter

29. This Court has made it clear that freedom of association includes the right to engage in a process of collective bargaining, which is a right denied by the impugned legislation and

²⁶ *MPAO*, para 96 and following [AR Vol 1, Tab 3]

²⁷ *Delisle* (infra) para 69 and following [BA Tab 2]

government action in this case. A violation of this *Charter* right is evident, and cannot be saved under s. 1 as a reasonable limit in a free and democratic society.

i. No Rational Connection

30. The apparent basis for the denial to RCMP members of the right to form associations free from unfair labour practices, and to have them recognized and represent their members, is the apprehension of the potential for a possible interruption in police services in the event of potential unresolved labour disputes, the whole based on a perception of a potential conflict of loyalty that would apparently arise as a result of recognizing freedom of association. The AMPMQ submits that this is far too tenuous and speculative a basis to satisfy the rational connection test.

31. It has not been established that any such occurrences are likely. The record indicates that throughout the struggle to form independent RCMP member associations, which has lasted over forty years, the members of the associations have done nothing to compromise the police services that they provide. They have simply sought to exercise their legal remedies in a respectful manner.

32. The enjoyment of fundamental freedoms and rights is more conducive to civil order and respect for the rule of law than the denial of those rights, particularly in the context where those who are denied rights have sworn to uphold the rule of law. Members of the RCMP are subject to a comprehensive Code of Conduct requiring strict compliance with legal authority and are required to swear an oath of allegiance.²⁸ No compelling case has ever been made out that the enjoyment of freedom of association will cause RCMP members to violate those obligations.

33. Concerns regarding strike action exist regardless of whether police officers are entitled to freely associate or not. As observed in *Delisle*, the only recorded police strike in England resulted from police force members being denied the freedom to associate.²⁹ Labour strife is attenuated where freedom to associate is recognized and enjoyed.

ii. No Minimal Impairment

²⁸ *Royal Canadian Mounted Police Act*, RS, CR-9, s.14; *Royal Canadian Mounted Police regulations*, 1988, s.37 and following.

²⁹ *Delisle*, para 122 [BA Tab 2]

34. In *Delisle*, Corey and Iacobucci J.J. assess the minimal impairment component of the section 1 analysis in the following terms:

*The essential practical question at this stage is whether Parliament could have granted to RCMP members, either within the PSSRA (now the “PSLRA”) itself or through the enactment of a separate statute, some of the basic associational protection contained in the PSSRA without compromising the important objective of securing a stable and reliable national police force.”*³⁰

35. Corey and Iacobucci J.J. concluded:

*“In light of the foregoing, it is our opinion that the valid objective of securing a stable and reliable RCMP can be achieved through a legislative mechanism that is less restrictive of free association than the existing complete exclusion from the PSSRA.”*³¹

36. Other means to ensure uninterrupted police services not requiring the absolute denial of the right to form independent associations are available and currently used, as Baudoin J. points out in his dissenting opinion in the Quebec Court of Appeal in *Delisle*.³² These alternatives are common and readily accepted in a free and democratic society.

37. The labour relations scheme which could govern RCMP officers could include a variety of mechanisms by which the Respondent’s concerns could be addressed without so severely restricting RCMP members’ freedom of association. For example:

- (a) Collective bargaining disputes could be resolved through interest arbitration and not through strike action;
- (b) Essential services could be legislated;
- (c) Appropriate bargaining units avoiding conflicts of interest could be created;
- (d) Those matters which may not be appropriate subjects of collective bargaining or interest arbitration might be excluded from the process.

iii. No Proportionality

38. The negative impact of the impugned legislation and government action curtails the human dignity, liberty and autonomy of RCMP members and denies them the opportunity "to

³⁰ *Delisle*, para 134 [BA Tab 2]

³¹ *Delisle*, para 139 [BA Tab 2]

³² *Delisle v. A. G. of Canada* [1997] 144 D.L.R. (4th) 301 [BA Tab 1]

gain some control over a major aspect of their lives, namely their work."³³ The importance of these values is underscored by the recognition that a fundamental reason for seeking to exercise freedom of association is the establishment of the rule of law in the workplace. The members of the RCMP have sworn to uphold the rule of law including fundamental rights and freedoms for all Canadians, and the AMPMQ respectfully submits that there is no credible basis for seeking to deny RCMP members these rights and freedoms as well. No balance has been struck between the public interest, management rights and the rights of RCMP members. The judgement in first instance provided an opportunity to strike that balance and should be restored by this Court.

PART IV: COSTS

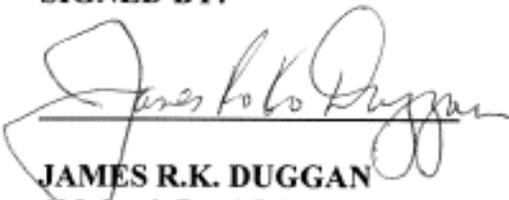
39. **THE AMPMQ RESPECTFULLY SUBMITS** that no costs should be awarded for or against the AMPMQ.

PART V: NATURE OF THE ORDER SOUGHT

40. The Intervener requests the right to present oral argument and such further or other order that the Court may deem appropriate.

Dated at the City of Montréal, in the Province of Québec this 27th day of August, 2013.

SIGNED BY:



JAMES R.K. DUGGAN

³³ *Wallace v. United Grain Growers Ltd.*, 1997 3 S.C.R. 701 at para. 93, cited in *Health Services* at para. 82.

PART VI : TABLE OF AUTHORITIES

PARA

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Preamble

WHEREAS there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes;

AND WHEREAS Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations;

AND WHEREAS the Government of Canada has ratified Convention No. 87 of the International Labour Organization concerning Freedom of Association and Protection of the Right to Organize and has assumed international reporting responsibilities in this regard;

AND WHEREAS the Parliament of Canada desires to continue and extend its support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all;

NOW THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

94. (1) No employer or person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or

(b) contribute financial or other support to a trade union.

(2) An employer is deemed not to contravene subsection (1) by reason only that they

(a) in respect of a trade union that is the bargaining agent for a bargaining unit comprised of or including employees of the employer,

(i) permit an employee or representative of the trade union to confer with them during hours of work or to attend to the business of the trade union during hours of work without any deduction from wages or any deduction of time worked for the employer,

(ii) provide free transportation to representatives of the trade union for purposes of collective bargaining, the administration of a collective agreement and related matters, or

(iii) permit the trade union to use their premises for the purposes of the trade union;

(b) contribute financial support to any pension, health or other welfare trust fund the sole purpose of which is to provide pension, health or other welfare rights or benefits to employees; or

(c) express a personal point of view, so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

(2.1) No employer or person acting on behalf of an employer shall use, for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives, the services of a person who was not an employee in the bargaining unit on the date on which notice to bargain collectively was given and was hired or assigned after that date to perform all or part of the duties of an employee in the bargaining unit on strike or locked out.

(3) No employer or person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union,

(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,

(iii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,

(iv) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Part,

(v) has made an application or filed a complaint under this Part, or

(vi) has participated in a strike that is not prohibited by this Part or exercised any right under this Part;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred on them by this Part;

(c) suspend, discharge or impose any financial or other penalty on an employee, or take any other disciplinary action against an employee, by reason of their refusal to perform

all or some of the duties and responsibilities of another employee who is participating in a strike or subject to a lockout that is not prohibited by this Part;

(d) deny to any employee any pension rights or benefits to which the employee would be entitled but for

(i) the cessation of work by the employee as the result of a lockout or strike that is not prohibited by this Part, or

(ii) the dismissal of the employee contrary to this Part;

(d.1) where the requirements of paragraphs 89(1)(a) to (d) have been met, cancel or threaten to cancel a medical, dental, disability, life or other insurance plan, whether administered by the employer or otherwise, that benefits employees, so long as the bargaining agent tenders or attempts to tender to the employer payments or premiums sufficient to continue the plan;

(d.2) where the requirements of paragraphs 89(1)(a) to (d) have been met and the bargaining agent has tendered or attempted to tender to the employer payments or premiums sufficient to continue an insurance plan referred to in paragraph (d.1), deny or threaten to deny to any employee any benefits under the plan to which the employee was entitled before those requirements were met;

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from

(i) testifying or otherwise participating in a proceeding under this Part,

(ii) making a disclosure that the person may be required to make in a proceeding under this Part, or

(iii) making an application or filing a complaint under this Part;

(f) suspend, discharge or impose any financial or other penalty on a person employed by them, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act that is prohibited by this Part; or

(g) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with a trade union in respect of a bargaining unit, if another trade union is the bargaining agent for that bargaining unit.

Code canadien du travail (L.R.C. (1985), ch. L-2), ss. 37, 94

Préambule

Attendu :

qu'il est depuis longtemps dans la tradition canadienne que la législation et la politique du travail soient conçues de façon à favoriser le bien-être de tous par l'encouragement de la pratique des libres négociations collectives et du règlement positif des différends;

que les travailleurs, syndicats et employeurs du Canada reconnaissent et soutiennent que la liberté syndicale et la pratique des libres négociations collectives sont les fondements de relations du travail fructueuses permettant d'établir de bonnes conditions de travail et de saines relations entre travailleurs et employeurs;

que le gouvernement du Canada a ratifié la Convention n° 87 de l'Organisation internationale du travail concernant la liberté syndicale et la protection du droit syndical et qu'il s'est engagé à cet égard à présenter des rapports à cette organisation;

que le Parlement du Canada désire continuer et accentuer son appui aux efforts conjugués des travailleurs et du patronat pour établir de bonnes relations et des méthodes de règlement positif des différends, et qu'il estime que l'établissement de bonnes relations du travail sert l'intérêt véritable du Canada en assurant à tous une juste part des fruits du progrès,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

37. Il est interdit au syndicat, ainsi qu'à ses représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi à l'égard des employés de l'unité de négociation dans l'exercice des droits reconnus à ceux-ci par la convention collective.

94. (1) Il est interdit à tout employeur et à quiconque agit pour son compte :

- a)* de participer à la formation ou à l'administration d'un syndicat ou d'intervenir dans l'une ou l'autre ou dans la représentation des employés par celui-ci;
- b)* de fournir une aide financière ou autre à un syndicat.

(2) Ne constitue pas une violation du paragraphe (1) le seul fait pour l'employeur :

- a)* soit de prendre l'une ou l'autre des mesures suivantes en faveur d'un syndicat qui est l'agent négociateur d'une unité de négociation groupant ou comprenant des employés travaillant pour lui :

(i) permettre à un employé ou à un représentant syndical de conférer avec lui ou de s'occuper des affaires du syndicat pendant les heures de travail, sans retenue sur le salaire ni réduction du temps de travail effectué pour lui,

(ii) assurer gratuitement le transport des représentants syndicaux dans le cadre des négociations collectives, de l'application d'une convention collective et des questions connexes,

(iii) permettre l'utilisation de ses locaux pour les besoins du syndicat;

b) soit de cotiser à un fonds de prévoyance géré en fiducie et destiné uniquement à procurer aux employés des avantages, notamment en matière de retraite ou d'assurance-maladie;

c) soit d'exprimer son point de vue, pourvu qu'il n'ait pas indûment usé de son influence, fait des promesses ou recouru à la coercition, à l'intimidation ou à la menace.

(2.1) Il est interdit à tout employeur ou quiconque agit pour son compte d'utiliser, dans le but établi de miner la capacité de représentation d'un syndicat plutôt que pour atteindre des objectifs légitimes de négociation, les services de toute personne qui n'était pas un employé de l'unité de négociation à la date de remise de l'avis de négociation collective et qui a été par la suite engagée ou désignée pour exécuter la totalité ou une partie des tâches d'un employé de l'unité de négociation visée par une grève ou un lock-out.

(3) Il est interdit à tout employeur et à quiconque agit pour son compte :

a) de refuser d'employer ou de continuer à employer une personne, ou encore de la suspendre, muter ou mettre à pied, ou de faire à son égard des distinctions injustes en matière d'emploi, de salaire ou d'autres conditions d'emploi, de l'intimider, de la menacer ou de prendre d'autres mesures disciplinaires à son encontre pour l'un ou l'autre des motifs suivants :

(i) elle adhère à un syndicat ou en est un dirigeant ou représentant — ou se propose de le faire ou de le devenir, ou incite une autre personne à le faire ou à le devenir — , ou contribue à la formation, la promotion ou l'administration d'un syndicat,

(ii) elle a été expulsée d'un syndicat ou suspendue pour une raison autre que le défaut de paiement des cotisations périodiques, droits d'adhésion et autres paiements qui incombent sans distinction à tous ceux qui veulent adhérer au syndicat ou y adhèrent déjà,

(iii) elle a participé, à titre de témoin ou autrement, à une procédure prévue par la présente partie, ou peut le faire,

(iv) elle a révélé — ou est sur le point de le faire — des renseignements en exécution ou prévision de l'obligation qui lui est imposée à cet effet dans le cadre d'une procédure prévue par la présente partie,

(v) elle a présenté une demande ou déposé une plainte sous le régime de la présente partie,

(vi) elle a participé à une grève qui n'est pas interdite par la présente partie ou exercé un droit quelconque prévu par cette dernière;

b) d'imposer, dans un contrat de travail, une condition visant à empêcher ou ayant pour effet d'empêcher un employé d'exercer un droit que lui reconnaît la présente partie;

c) de suspendre ou congédier un employé, de lui imposer des sanctions pécuniaires ou autres, ou de prendre à son encontre d'autres mesures disciplinaires, parce qu'il a refusé de s'acquitter de tout ou partie des fonctions et responsabilités d'un autre employé qui participe à une grève ou est victime d'un lock-out non interdits par la présente partie;

d) de priver un employé des droits à pension ou des prestations de retraite auxquels il aurait eu droit s'il n'avait pas :

(i) soit cessé de travailler par suite d'un lock-out ou d'une grève non interdits par la présente partie,

(ii) soit été congédié en violation de la présente partie;

d.1) une fois que les conditions prévues aux alinéas 89(1)*a)* à *d)* ont été remplies, d'annuler ou de menacer d'annuler une police d'assurance invalidité, d'assurance médicale, d'assurance de soins dentaires, d'assurance-vie ou autre régime d'assurance dont les employés sont bénéficiaires — que la police soit administrée par l'employeur ou par un tiers — à la condition que l'agent négociateur lui ait remis ou ait tenté de lui remettre les primes ou autres sommes dont le versement est nécessaire pour que la police d'assurance en question demeure valide;

d.2) une fois que les conditions prévues aux alinéas 89(1)*a)* à *d)* ont été remplies et que l'agent négociateur lui a remis ou a tenté de lui remettre les primes ou autres sommes dont le versement est nécessaire pour que la police d'assurance mentionnée à l'alinéa *d.1)* demeure valide, de refuser ou de menacer de refuser à un employé des avantages prévus par la police et auxquels l'employé avait droit avant que ces conditions ne soient remplies;

e) de chercher, notamment par intimidation, par menace de congédiement ou par l'imposition de sanctions pécuniaires ou autres, à obliger une personne soit à s'abstenir ou à cesser d'adhérer à un syndicat ou d'occuper un poste de dirigeant ou de représentant syndical, soit à s'abstenir :

(i) de participer à une procédure prévue par la présente partie, à titre de témoin ou autrement,

(ii) de révéler des renseignements qu'elle peut être requise de divulguer dans le cadre d'une procédure prévue par la présente partie,

(iii) de présenter une demande ou de déposer une plainte sous le régime de la présente partie;

f) de suspendre ou congédier une personne qui travaille pour lui, de lui imposer des sanctions pécuniaires ou autres, ou de prendre à son encontre d'autres mesures disciplinaires, parce qu'elle a refusé d'accomplir un acte interdit par la présente partie;

g) de négocier collectivement en vue de conclure une convention collective ou de conclure une telle convention avec un syndicat autre que celui qui est l'agent négociateur de l'unité de négociation en cause.

Public Service Labour Relations Act, SC 2003, c 22, s. 2(1)(d)

2(1)(d) “employee”, except in Part 2, means a person employed in the public service, other than

(d) 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;

2(1)(d) « fonctionnaire » Sauf à la partie 2, personne employée dans la fonction publique, à l'exclusion de toute personne :

d) qui est membre ou gendarme auxiliaire de la Gendarmerie royale du Canada, ou y est employée sensiblement aux mêmes conditions que ses membres;

Royal Canadian Mounted Police Act, RS, cR-9, ss. 14, 37

14. (1) Every member shall, before entering on the duties of the member's office, take the oath of allegiance and the oaths set out in the schedule.

(2) The oaths prescribed by subsection (1), and any other oath or declaration that may be necessary or required, may be taken by the Commissioner before any judge, provincial court judge or justice of the peace having jurisdiction in any part of Canada, and by any other member before the Commissioner or any officer or person having authority to administer oaths or take and receive affidavits.

37. It is incumbent on every member

to respect the rights of all persons;

to maintain the integrity of the law, law enforcement and the administration of justice;

to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;

to avoid any actual, apparent or potential conflict of interests;

to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;

to be incorruptible, never accepting or seeking special privilege in the performance of the member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties;

to act at all times in a courteous, respectful and honourable manner; and

to maintain the honour of the Force and its principles and purposes.

Loi sur la Gendarmerie royale du Canada (L.R.C. (1985), ch. R-10), ss. 14, 37

14. (1) Avant d'entrer en fonctions, les membres prêtent le serment d'allégeance de même que les serments figurant à l'annexe.

(2) Les serments visés au paragraphe (1), de même que tous autres serments ou déclarations nécessaires ou exigés, peuvent être prêtés par le commissaire en présence d'un juge, juge de la cour provinciale ou juge de paix dans sa circonscription judiciaire au Canada, et par tout autre membre de la Gendarmerie en présence du commissaire, de tout officier ou de toute personne habilitée à faire prêter les serments ou affidavits.

37. Il incombe à chaque membre :

- a)* de respecter les droits de toutes personnes;
- b)* de maintenir l'intégrité du droit et de son application ainsi que de l'administration de la justice;
- c)* de remplir ses fonctions avec promptitude, impartialité et diligence, conformément au droit et sans abuser de son autorité;
- d)* d'éviter tout conflit d'intérêt réel, apparent ou possible;
- e)* de veiller à ce que l'inconduite des membres ne soit pas cachée ou ne se répète pas;
- f)* d'être incorruptible, de ne pas rechercher ni accepter des avantages particuliers dans l'exercice de ses fonctions et de ne jamais contracter une obligation qui puisse entraver l'exécution de ses fonctions;
- g)* de se conduire en tout temps d'une façon courtoise, respectueuse et honorable;
- h)* de maintenir l'honneur de la Gendarmerie, ses principes et ses objets.

Royal Canadian Mounted Police Regulations, 1988, SOR/88-361, ss. 38, 96

38. A member shall promptly report any incident for which the member has been charged with an offence under an Act of Parliament or of the legislature of a province.

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

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

38. Le membre doit signaler sans tarder tout incident relativement auquel il est accusé d'une infraction à une loi fédérale ou provinciale.

96. (1) La Gendarmerie établit un programme de représentants divisionnaires des relations fonctionnelles qui a pour objet d'assurer la représentation des membres en matière de relations fonctionnelles.

(2) Le programme de représentants divisionnaires des relations fonctionnelles est mis en application par les représentants divisionnaires des relations fonctionnelles qu'élisent les membres des divisions et des secteurs.