

**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**

**- and -**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**- and -**

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SYNDICATS NATIONAUX, CANADIAN POLICE ASSOCIATION, CANADIAN  
LABOUR CONGRESS, CANADIAN CIVIL LIBERTIES ASSOCIATION, PUBLIC  
SERVICE ALLIANCE OF CANADA, and  
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

**Interveners**

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**FACTUM OF THE INTERVENER,  
the MOUNTED POLICE MEMBERS' LEGAL FUND**

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, SOR/2002-156, as amended)

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## PART I – OVERVIEW AND STATEMENT OF FACTS

### A. Overview

1. The appellants, the Mounted Police Association of Ontario and the B.C. Mounted Police Professional Association (collectively, the “Appellants”), claim that the Royal Canadian Mounted Police’s (“RCMP”) current labour relations system interferes with RCMP members’ freedom of association in violation of section 2(d) of the *Canadian Charter of Rights and Freedoms* (the “Charter”).<sup>1</sup>

2. The intervener, the Mounted Police Members’ Legal Fund (the “Legal Fund”), is an important element of the RCMP’s current labour relations system. Among other activities, it represents the employment-related interests of the approximately 77% of RCMP members who have elected to become members of the Legal Fund. In the decision under appeal, the Ontario Court of Appeal found that the Legal Fund plays a role that is complementary to, and supportive of, the Staff Relations Representative Program (“SRRP”), the feature of the RCMP’s labour relations system that is the principal target of this Appeal.<sup>2</sup>

3. The Legal Fund’s position is that the Appeal should be dismissed for three principal reasons.

4. First, the RCMP’s labour relations system involves several different representative elements, including the Legal Fund. These elements, individually and collectively, facilitate a process of good faith consultation and dialogue between RCMP members and management in respect of workplace issues. Accordingly, this system meets the constitutional standard established by this Honourable Court in *Ontario (Attorney General) v. Fraser*.<sup>3</sup>

5. Second, the decision under appeal relied on findings of fact made by the application judge, including the findings that (1) there is extensive good faith collaboration between RCMP members and management within the SRRP system; and (2) RCMP management listens carefully and with an open mind to the views of the Staff Relations Representatives (“SRR”) within the SRRP process. When the clear and established principles from *Fraser* are applied to these findings, the result reached in the decision under appeal is constitutionally sound.

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<sup>1</sup> *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982 c. 11.

<sup>2</sup> Reasons for Decision of the Ontario Court of Appeal dated June 1, 2012 (“Court of Appeal Reasons”), para. 132.

[Record of the Appellants (“Appellants’ Record”), Vol. 1, Tab 16, p. 116].

<sup>3</sup> 2011 SCC 20 (“*Fraser*”) [Book of authorities of the Appellants, Volume I, Tab 10].



6. Third, the structure of the RCMP's existing labour relations system is entirely consistent with international labour law principles, and therefore should be found to comply with the applicable constitutional requirements.

## **B. The Relevant Facts**

7. The Legal Fund accepts the facts as summarized at paragraphs 6 to 34 of the Attorney General of Canada's factum. The additional factual submissions below highlight the relevant features of the three core elements of the current RCMP labour relations system: (1) the SRRP; (2) RCMP Pay Council (the "Pay Council"); and (3) the Legal Fund.

### **i) The SRRP**

8. In addition to promoting mutually beneficial relations between RCMP management and members, the SRRP provides members with fair and equitable representation in staff relations matters and facilitates member participation in the development and implementation of RCMP policies and programs.<sup>4</sup>

9. In fact, the elected SRRs' primary duty is to represent members in respect of matters that affect members' welfare, dignity, and working conditions. To fulfil this duty, SRRs engage with RCMP management at all levels to resolve any issues that may arise. Among other activities, SRRs represent and assist members who wish to respond to action taken by management in respect of their employment, including through the presentation of grievances under Part III of the *Royal Canadian Mounted Police Act*.<sup>5</sup>

10. RCMP members can speak to their SRRs in confidence regarding any matter (other than criminal activity).<sup>6</sup>

11. Notably, RCMP members also provide input to their SRRs respecting their ideas and concerns on workplace issues. In turn, SRRs raise members' ideas, suggestions, and concerns with management at joint meetings at the divisional, regional, and national levels. In this way, RCMP members, through their SRRs, make an invaluable contribution to RCMP management's decisions.<sup>7</sup>

12. The SRRP's independence from RCMP management is a core principle underlying the SRRP's Constitution. While the RCMP allocates an annual sum to fund the SRRP, RCMP

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<sup>4</sup> Affidavit of Ken Legge ("Legge Affidavit"), para. 24 [Appellants' Record, Vol. XI, Tab 68, p. 60]

<sup>5</sup> R.S.C., 1985, c. R-10; *Ibid*, paras. 29 – 30 [Appellants' Record, Vol. XI, Tab 68, p. 62]

<sup>6</sup> Legge Affidavit, para. 33 [Appellants' Record, Vol. XI, Tab 68, p. 63]

<sup>7</sup> Legge Affidavit, para. 25 [Appellants' Record, Vol. XI, Tab 68, p. 60]

management does *not* influence, guide, or control the SRRP's activities and decision-making processes. Furthermore, the SRRP is *not* required to make reports to management on its activities (with the exception of an Annual Report).<sup>8</sup>

## ii) Pay Council

13. In addition to the SRRP, the RCMP's current labour relations system includes the Pay Council. This body was established in 1996 following a review by the law firm Stikeman Elliott of the processes then in place for determining RCMP members' pay and benefits. Stikeman Elliot's review concluded that a new process for determining members' compensation and working conditions should be established to ensure that members have access to the expertise necessary to promote their interests, and to ensure that their interests are addressed fairly.<sup>9</sup>

14. Today, Pay Council is responsible for making recommendations to the RCMP Commissioner about the pay, benefits, and other working conditions of most RCMP members.<sup>10</sup>

15. Pay Council has five members: a neutral chairperson; two representatives appointed by the SRRP; and, two representatives appointed by management.<sup>11</sup> The SRRP representatives advocate the views of RCMP members on any matters that are addressed by Pay Council.<sup>12</sup> The Pay Council's recommendations are developed by the four representatives through a process of joint formulation.<sup>13</sup> This joint process is, for all intents and purposes, a process of negotiation.

16. In *Meredith v. Canada (Attorney General)*,<sup>14</sup> the Federal Court concluded that the Pay Council process is important to RCMP members and should be afforded the protection of section 2(d) of the *Charter*.<sup>15</sup> While the Federal Court of Appeal in *Canada (Attorney General) v. Meredith*<sup>16</sup> overturned the Federal Court's decision, it did *not* disagree with the lower court's findings on this point.

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<sup>8</sup> *Ibid*, paras. 19 – 21 [Appellants' Record, Vol. XI, Tab 68, p. 59]; *Ibid*, Exhibit G [Record of the Respondent, Vol. 1 Tab 32, p. 206].

<sup>9</sup> Affidavit of Fred Drummie ("Drummie Affidavit"), para. 7 [Appellants' Record, Vol. XI, Tab 69, p. 78].

<sup>10</sup> *Ibid*, paras. 8 – 9 [Appellants' Record, Vol. XI, Tab 69, p. 79].

<sup>11</sup> *Ibid*, paras. 12 – 15 [Appellants' Record, Vol. XI, Tab 69, pp. 79 - 80].

<sup>12</sup> *Ibid*, para. 19 [Appellants' Record, Vol. XI, Tab 69, p. 81].

<sup>13</sup> *Ibid*, para. 25 [Appellants' Record, Vol. XI, Tab 69, p. 83].

<sup>14</sup> 2011 FC 735, Book of authorities of the Mounted Police Members' Legal Fund [Legal Fund's Authorities, Tab 1].

<sup>15</sup> *Ibid*, para. 73 [Legal Fund's Authorities, Tab 1].

<sup>16</sup> 2013 FCA 112 ("*Meredith*") [Book of authorities of the Appellants, Volume II, Tab 17].

### iii) The Legal Fund

17. In the decision under appeal, the Ontario Court of Appeal described the role of the Legal Fund within the RCMP labour relations system as follows:

**...the Legal Fund is a voluntary not-for-profit corporation. Some 14,000 RCMP members have joined the Fund and some 100 additional members join each month. It was established to help its members with various employment-related issues. It assists RCMP members by acting to advance their dignity and welfare, in relation to matters arising under RCMP policies and directives. It is funded exclusively by the dues of its members, and is entirely self-governed, independent and autonomous, with independent, democratically elected directors and officers. The Legal Fund plays a role that is complementary to, and supportive of, the SRRP. [...]**

**That the Legal Fund expends some funds in ways that the respondents consider inappropriate is neither here nor there. The point is that the formation and maintenance of such a robust association by RCMP members and the functions it performs support the conclusion it is not effectively impossible for RCMP members to exercise their fundamental freedom of association in relation to workplace issues.<sup>17</sup>**

## PART II – STATEMENT OF POSITION ON THE QUESTIONS IN ISSUE

18. There are four Constitutional Questions at issue in this appeal:

- **Question 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*?
- **Question 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*?
- **Question 3:** 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 *Canadian Charter of Rights and Freedoms*?
- **Question 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*?

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<sup>17</sup> Court of Appeal Reasons, paras. 132 – 134 [Appellants’ Record, Vol. 1, Tab 16, p. 116]

19. The Legal Fund submits that the answer to Questions 1 and 3 is “no”, and that it is unnecessary to answer Questions 2 and 4.

### **PART III – STATEMENT OF ARGUMENT**

#### **A. Section 2(d) Only Requires a Process of Good Faith Consultation and Dialogue**

20. In *Fraser*, this Honourable Court held that a violation of section 2(d) of the *Charter* will only occur if government action makes it “effectively impossible” for workers to engage in meaningful association to achieve their workplace goals. Specifically, a violation of section 2(d) of the *Charter* will occur if the effect of government action is to make “good faith resolution of workplace issues between employees and their employer effectively impossible.”<sup>18</sup>

21. Furthermore, *Fraser* clarified that, at most, the derivative right to a process of “collective bargaining” protected under section 2(d) of the *Charter* entitles employees to make collective representations to their employer, and to have those representations considered by the employer in good faith.<sup>19</sup> Section 2(d) does *not* give employees the right to a “particular model of collective bargaining” or, for that matter, a “particular process.”<sup>20</sup>

22. Notably, this means that even if it is assumed that RCMP members *are* entitled to the derivative right of collective bargaining, then section 2(d) of the *Charter* only gives them the right to *a* process that allows them to make collective representations to their employer, and to have those representations considered by the employer in good faith. They do *not* have a constitutional right to the process of their choice.

#### **B. The SRRP Meets the Constitutional Standard Established in *Fraser***

23. On the facts, it is clear that RCMP members can, and do, make collective representations to RCMP management through the SRRP. In turn, RCMP management considers those representations in good faith.

24. Indeed, the application judge found that, in practice, the SRRP provides for such engagement between RCMP members and management. The application judge concluded:

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<sup>18</sup> *Fraser*, para. 98 [Book of authorities of the Appellants, Volume I, Tab 10].

<sup>19</sup> *Ibid*, paras. 2, 99 [[Book of authorities of the Appellants, Volume I, Tab 10].

<sup>20</sup> *Ibid*, paras. 45 – 47 [Book of authorities of the Appellants, Volume I, Tab 10].

- The collaboration that occurs between the SRRs and management is extensive and is carried out in good faith by everyone involved;<sup>21</sup>
- RCMP management listens carefully and with an open mind to the views of SRRs in the consultative process established by the SRRP;<sup>22</sup> and,
- The consultation process between the SRRs and RCMP management is of a higher quality than the process that was at issue in *Fraser* (which this Honourable Court found complied with section 2(d) of the *Charter*).<sup>23</sup>

25. In holding that the RCMP's labour relations system is constitutional, the Ontario Court of Appeal's decision expressly relied on the application judge's findings of fact, including the findings that (1) there is extensive good faith collaboration between the SRRs and management; and (2) that management listens carefully and with an open mind to the views of the SRRs.<sup>24</sup>

26. When the principles set out in *Fraser* are applied to these findings of fact, it is clear that the result reached by the Ontario Court of Appeal is constitutionally sound.

### **C. The SRRP Represents RCMP Members Independently of RCMP Management**

27. The Appellants assert that the SRRP is not "independent" of RCMP management.<sup>25</sup> This submission is based on the origins of the SRRP and not on how the SRRP (and other elements of the RCMP labour relations system) operate in practice today.

28. In fact, the SRRP's structure (including its Constitution), and the actions of SRRs taken on behalf of RCMP members, demonstrates that the SRRP acts without "employer influence" in the course of fulfilling its role as RCMP members' representative.

29. As described above, the SRRP: assists and represents RCMP members in respect of matters that affect their welfare, dignity, and working conditions; advocates members' views on compensation matters through Pay Council; provides members with a confidential forum in which to address their employment-related issues; and, operates autonomously from RCMP management.

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<sup>21</sup> Reasons for Decision of Justice MacDonnell dated April 6, 2009 ("Application Judge's Reasons"), para. 31 [Appellants' Record, Vol. 1, Tab 3, p. 22]

<sup>22</sup> *Ibid.*, para. 68 [Appellants' Record, Vol. 1, Tab 3, pp. 29 - 30]

<sup>23</sup> *Ibid.*, para. 73 [Appellants' Record, Vol. 1, Tab 3, p. 31]

<sup>24</sup> Court of Appeal Reasons, para. 130 [Appellants' Record, Vol. 1, Tab 16, p. 115]

<sup>25</sup> Factum of the Appellants, paras. 52 - 58.

30. Additionally, SRRs take positions and/or actions on behalf of RCMP members that are clearly inconsistent with the views of RCMP management and/or other organs of the Federal Government. This is well-illustrated by the Federal Court of Appeal's recent decision in *Meredith*.<sup>26</sup> That decision arose from a challenge under section 2(d) of the *Charter* commenced by two SRRs, representing all RCMP members, against the Attorney General of Canada in respect of the Federal Government's decision to "roll back" a compensation increase for RCMP members that had been reached through the Pay Council process. The SRRs' challenge was supported by the Legal Fund. Thus, this litigation demonstrates that the SRRP, Pay Council, and the Legal Fund are intertwined in a single, cohesive labour relations system within the RCMP.

31. Clearly, the fact that the SRRP was originally established by the RCMP has *not* made the SRRP a "pawn" of RCMP management or a "company union" created for the purpose of defeating employees' rights. To the contrary, in practice SRRs represent RCMP members' interests forcefully and independently, including when members' interests conflict with the preferred course of the RCMP Commissioner, Treasury Board, and/or the Federal Government more broadly.

32. In any event, under the clear and established principles in *Fraser*, there is no requirement that a representative process must be "structurally independent" from the employer to comply with section 2(d) of the *Charter*. Rather, the constitutional standard calls for a meaningful process for good faith resolution of workplace issues through dialogue and consultation. The SRRP easily meets and exceeds this standard.

#### **D. Viewed in its Entirety, the RCMP's Labour System Provides a Meaningful Process**

33. The constitutional inquiry in this case must take into account the operation of the RCMP's current labour relations system *as a whole*, including all of the various representative elements described above, in order to determine whether section 2(d) of the *Charter* has been violated.

34. Such a "systemic" inquiry is necessary to balance the equally legitimate, but often competing, labour relations interests of workers and governments, and to do so in a contextual manner that recognizes the broad diversity and practical realities of Canadian workplaces.

35. More specifically, while workers have important associational rights under section 2(d) of the *Charter*, this Honourable Court has recognized that governments have the legitimate need to

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<sup>26</sup> See *Meredith* generally [Book of authorities of the Appellants, Volume II, Tab 17]

regulate labour relations in the workplace, including by placing some limits on unions and employees.<sup>27</sup>

36. Further, these competing interests must be balanced within *actual* Canadian workplaces, which are incredibly diverse in nature and may properly call for different labour laws, regulations, and systems depending on the specific nature of the workplace, and/or the nature of the work, at issue. Additionally, it must be recognized that while certain government restrictions may make it difficult, or impossible, for employees in a given workplace to act collectively through a *particular association or process*, those same employees may be perfectly able to act collectively to achieve their workplace goals through an alternative association or process.

37. A systemic inquiry accounts for these important characteristics of Canadian labour relations, and in so doing takes a contextual and purposive approach to achieving freedom of association in Canadian workplaces. In contrast, the Appellant’s proposed inquiry ignores purpose and context, and seeks to divorce section 2(d) of the *Charter* from actual workplaces in favour of an abstract “one size fits all” approach that would mandate one form of associational activity in *all* Canadian workplaces.

38. These considerations are all properly reflected in the constitutional standard that was established in *Fraser*: while section 2(d) of the *Charter* gives employees the right to engage in a meaningful process with their employer, it does *not* guarantee access to a preferred model of collective bargaining, or a “particular process.”

39. Additionally, a systemic inquiry is entirely consistent with, and required by, the constitutional inquiry that this Honourable Court described in *Fraser* and *BC Health Services*.<sup>28</sup>

40. Specifically, this Honourable Court in *Fraser* stated that the constitutional inquiry hinges on a single, “essential” question: does the impugned government action (or omission), in fact, make it *effectively impossible* for employees to act collectively in furtherance of workplace goals.<sup>29</sup> This question can only be answered by examining the workplace and labour relations system at issue in their entirety, and with reference to how they operate in practice.

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<sup>27</sup> See *Plourde v. Wal-Mart Canada Corp.*, 2009 SCC 54, paras. 56-57 [Book of authorities of the Intervener, the Attorney General of Ontario, Volume I, Tab II].

<sup>28</sup> 2007 SCC 27 [Book of authorities of the Appellants, Volume II, Tab 11]

<sup>29</sup> *Fraser*, para. 98 [Book of authorities of the Appellants, Volume I, Tab 10].

41. Similarly, this Honourable Court also recognized the necessity of a systemic analysis in *BC Health Services*, where it emphasized that the constitutional inquiry “in every case is contextual and fact-specific,” and ultimately directed towards weighing how the impugned government action (or omission) actually impacts employees’ ability to associate.<sup>30</sup>

42. The Ontario Court of Appeal correctly took this approach when it applied a contextual and fact-specific analysis to the RCMP’s existing labour relations system in its entirety, including the Legal Fund, and concluded that the Legal Fund was a “robust association” and that it was *not* effectively impossible for RCMP members to act collectively to achieve their workplace goals.<sup>31</sup>

### **E. International Labour Law Principles Do *Not* Support the Appellants’ Position**

43. The Appellants assert that the International Labour Organization’s (“ILO”) Convention 87, as well as general principles articulated by the ILO’s Committee on Freedom of Association (“CFA”), support their entitlement to an “independent” collective bargaining process.<sup>32</sup>

44. This assertion is plainly incorrect in light of this Honourable Court’s conclusions in *BC Health Services* and *Fraser* that the meaning and scope of section 2(d) of the *Charter* should be interpreted in light of international labour principles.<sup>33</sup>

45. First, members of the police are expressly excluded from the ILO Conventions that address freedom of association, the right to organize, and collective bargaining, namely, ILO Convention 87,<sup>34</sup> which Canada has ratified, and ILO Convention 98,<sup>35</sup> which Canada has *not* ratified. Both Conventions expressly state that members of the police do *not* have the same entitlement to the “rights” set out in the Conventions as other workers; rather, the extent to which these principles apply to the police “shall be determined by national laws or regulations.”<sup>36</sup>

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<sup>30</sup> *BC Health Services*, paras. 92, 109 [Book of authorities of the Appellants, Volume II, Tab 11].

<sup>31</sup> Court of Appeal Reasons, paras. 132 – 134 [Appellants’ Record, Vol. 1, Tab 16, p. 116].

<sup>32</sup> Factum of the Appellants, para. 55.

<sup>33</sup> *BC Health Services*, para. 78 [Book of authorities of the Appellants, Volume II, Tab 11]; *Fraser*, paras. 92-93 [Book of authorities of the Appellants, Volume I, Tab 10].

<sup>34</sup> ILO Convention 87, Freedom of Association and Protection of the Right to Organise Convention, 1948 [Book of authorities of the Appellants, Volume III, Tab 25].

<sup>35</sup> ILO Convention 98, Right to Organise and Collective Bargaining Convention, 1949 [Legal Fund’s Authorities, Tab 2].

<sup>36</sup> Convention 87, article 9(1) [Book of authorities of the Appellants, Volume III, Tab 25]; Convention 98, article 5(1) [Legal Fund’s Authorities, Tab 2].



46. Second, the CFA has expressly found that members of the police may be denied the right to organize.<sup>37</sup>

47. Thus, international labour law principles certainly do *not* support the Appellants' arguments that: (1) the design of the SRRP violates section 2(d) of the *Charter*; or (2) RCMP management (or another organ of the Federal Government) is constitutionally required to bargain collectively with the Appellants. To the contrary, the design of the RCMP's existing labour relations system is entirely consistent with international labour law principles, and therefore should be found to comply with section 2(d) of the *Charter*.

#### **PART IV – SUBMISSIONS CONCERNING COSTS**

48. The Legal Fund does not seek costs and requests that none be awarded against it.

#### **PART V – ORDER SOUGHT**

49. The Legal Fund respectfully requests that:

- a) The Constitutional Questions be answered in accordance with paragraph 19 above; and,
- b) The Legal Fund be permitted to make oral submissions of not more than ten (10) minutes at the hearing of this appeal.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of September, 2013**




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**John D. R. Craig**




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**Christopher D. Pigott**

**Counsel for the Intervener, Mounted Police Members' Legal Fund**

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<sup>37</sup> ILO, *Freedom of association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 5<sup>th</sup> (revised) ed. (Geneva: International Labour Office, 2006), para. 220 [Legal Fund's Authorities, Tab 3]; ILO Committee on the Freedom of Association, 333rd Report, Case No. 2229 (Pakistan), para. 108 [Legal Fund's Authorities, Tab 5]; ILO Committee on the Freedom of Association, 309th Report, Case No. 1865 (Korea, Republic of), para. 145 [Legal Fund's Authorities, Tab 4].

## PART VI – TABLE OF AUTHORITIES

Case Law	Paragraph Cited
<p><i>Canada (Attorney General) v. Meredith</i>, 2013 CarswellNat 1114, 2013 FCA 112.</p> <p><b>Book of authorities of the Appellants, Volume II, Tab 17.</b></p>	16, 30
<p><i>Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia</i>, 2007 CarswellBC 1289 (S.C.C.), 2007 SCC 27.</p> <p><b>Book of authorities of the Appellants, Volume II, Tab 11.</b></p>	39, 41, 44
<p><i>Meredith v. Canada (Attorney General)</i>, 2011 FC 735.</p>	16, 30
<p><i>Ontario (Attorney General) v. Fraser</i>, 2011 CarswellOnt 2695 (S.C.C.), 2011 SCC 20.</p> <p><b>Book of authorities of the Appellants, Volume I, Tab 10.</b></p>	4, 5, 21, 21, 24, 26, 32, 39, 44
<p><i>Plourde v. Wal-Mart Canada Corp.</i>, 2009 SCC 54.</p> <p><b>Book of authorities of the Intervener, the Attorney General of Ontario, Volume I, Tab II.</b></p>	35
<b>Secondary Sources</b>	
<p>ILO Convention 87, Freedom of Association and Protection of the Right to Organise Convention, 1948.</p> <p><b>Book of authorities of the Appellants, Volume III, Tab 25.</b></p>	43, 45
<p>ILO Convention 98, Right to Organise and Collective Bargaining Convention, 1949.</p>	45
<p>ILO, <i>Freedom of association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO</i>, 5<sup>th</sup> (revised) ed. (Geneva: International Labour Office, 2006).</p>	46
<p>ILO Committee on the Freedom of Association, 309th Report, Case No. 1865 (Korea, Republic of).</p>	46
<p>ILO Committee on the Freedom of Association, 333rd Report, Case No. 2229 (Pakistan).</p>	46

**PART VII – STATUTES AND RULES RELIED ON**

**1. The *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982 c. 11**

[...]

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
2. Everyone has the following fundamental freedoms:
  - a) freedom of conscience and religion;
  - b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
  - c) freedom of peaceful assembly; and
  - d) freedom of association

[...]

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[...]

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
2. Chacun a les libertés fondamentales suivantes:
  - a) liberté de conscience et de religion;
  - b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
  - c) liberté de réunion pacifique;
  - d) liberté d'association.

[...]

**2. *Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10***

[...]

31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

(2) A grievance under this Part must be presented

(a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and

(b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.

(3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part.

(4) Subject to any limitations prescribed pursuant to paragraph 36(b), any member presenting a grievance shall be granted access to such written or documentary information under the control of the Force and relevant to the grievance as the member reasonably requires to properly present it.

(5) No member shall be disciplined or otherwise penalized in relation to employment or any term of employment in the Force for exercising the right under this Part to present a grievance.

(6) As soon as possible after the presentation and consideration of a grievance at any level in the grievance process, the member constituting the level shall render a decision in writing as to the disposition of the grievance, including reasons for the decision, and serve the member presenting the grievance and, if the grievance has been referred to the Committee pursuant to section 33, the Committee Chairman with a copy of the decision.

(7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

[...]

47.1 (1) Subject to any rules made pursuant to subsection (3), a member may be represented or assisted by any other member in any

(a) presentation of a grievance under Part III;

- (b) proceeding before a board, other than the Commission;
- (c) preparation of written representations under subsection 45.19(6); or
- (d) appeal under section 42, 45.14 or 45.24.

(2) Where a member is represented or assisted by another member pursuant to subsection (1), communications passing in confidence between the two members in relation to the grievance, proceeding, representations or appeal are, for the purposes of this Act, privileged as if they were communications passing in professional confidence between the member and the member's solicitor.

[...]

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[...]

31. (1) Sous réserve des paragraphes (2) et (3), un membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue à la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour corriger ce préjudice.

(2) Un grief visé à la présente partie doit être présenté :

(a) au premier niveau de la procédure applicable aux griefs, dans les trente jours suivant celui où le membre qui a subi un préjudice a connu ou aurait normalement dû connaître la décision, l'acte ou l'omission donnant lieu au grief;

(b) à tous les autres niveaux de la procédure applicable aux griefs, dans les quatorze jours suivant la signification au membre de la décision relative au grief rendue par le niveau inférieur immédiat.

(3) Ne peut faire l'objet d'un grief en vertu de la présente partie une nomination faite par le commissaire à un poste visé au paragraphe (7).

(4) Sous réserve des restrictions prescrites conformément à l'alinéa 36b), le membre qui présente un grief peut consulter la documentation pertinente placée sous la responsabilité de la Gendarmerie et dont il a besoin pour bien présenter son grief.

(5) Le fait qu'un membre présente un grief en vertu de la présente partie ne doit entraîner aucune peine disciplinaire ni aucune autre sanction relativement à son emploi ou à la durée de son emploi dans la Gendarmerie.

(6) Le membre qui constitue un niveau de la procédure applicable aux griefs rend une décision écrite et motivée dans les meilleurs délais possible après la présentation et l'étude

du grief, et en signifie copie au membre intéressé, ainsi qu'au président du Comité en cas de renvoi devant le Comité en vertu de l'article 33.

(7) Le gouverneur en conseil peut, par règlement, déterminer, pour l'application du paragraphe (3), les postes dont le titulaire relève du commissaire, directement ou par l'intermédiaire d'une autre personne.

[...]

47.1 (1) Sous réserve des règles établies conformément au paragraphe (3), un membre peut représenter ou assister un autre membre :

(a) lors de la présentation d'un grief en vertu de la partie III;

(b) lors des procédures tenues devant une commission, autre que la Commission;

(c) lors de la préparation d'observations écrites en vertu du paragraphe 45.19(6);

(d) lors d'un appel interjeté en vertu des articles 42, 45.14 ou 45.24.

(2) Lorsqu'un membre se fait représenter ou assister par un autre membre conformément au paragraphe (1), les communications confidentielles qu'ils échangent relativement au grief, aux procédures, aux observations ou à l'appel sont, pour l'application de la présente loi, protégées comme si elles étaient des communications confidentielles échangées par le membre et son avocat.

[...]