Canadian Foundation for Labour Rights

Labour rights are human rights

Backgrounder

Summary of current Charter challenges and their impact on union security in Canada

Updated
February 2016

The Canadian Foundation of Labour Rights (CFLR) has made every effort to ensure the information in this ***Backgrounder*** is accurate and current at the time it was printed.

We welcome any comments and feedback on the contents of this document. Should you notice any errors or omissions, please let us know by emailing CFLR at info@labourrights.ca

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CURRENT CASES BEFORE THE COURTS

Case # 1 Ontario *Toronto Transit Commission Labour Disputes Resolution Act*, Bill 150 (March 2011)

Summary of the Legislation — Bill 150 declared the Toronto Transit Commission an essential service, which took away its workers' right to strike.

Nature of the Court Challenge — Violation of section 2 (d) — freedom of association — for denying transit workers the right to strike.

Initiators of the Challenge — Amalgamated Transit Workers (ATU) Local 113 and the Canadian Union of Public Employees on behalf of CUPE Local 2.

Current Level of Court — Both ATU Local 113 and CUPE Local 2 filed an application on October 2, 2015, at the Ontario Superior Court of Justice.

Union Legal Counsel — ATU Local 113 is represented by Josh Phillips, a managing partner at Ursel Phillips Fellows Hopkinson LLP. CUPE Local 2 is represented by in-house counsel Gavin Leeb, and by David Wright, a partner with Ryder, Wright, Blair & Holmes.

Interveners — No interveners at this stage.

ILO Complaint — ATU filed an ILO complaint (Case No. 3107 against Bill 150 in December 2014. It has yet to be examined by the ILO's Committee on Freedom of Association.

Case # 2 Federal *Economic Action Plan,* Bill C-59 (June 2015)

Summary of the Legislation — The Act implements provisions of the federal budget tabled in Parliament on April 21, 2015 and other measures. Sections 254 to 269 gave the federal government the power to override the Public Service Labour Relations Act and unilaterally amend the sick leave provisions of the collective agreements covering employees of the core public service.

Nature of the Court Challenge — Violation of section 2 (d) — freedom of association — of the Charter in that the legislative changes "interfere" with meaningful collective bargaining by reducing the negotiating power of unions.

Initiators of the Challenge — There are two separate challenges. The first challenge is led by the Professional Institute of the Public Service of Canada (PIPSC) and Canadian Association of Professional Employees (CAPE), on behalf of 12 of the 17 unions

representing federal public employees. The second challenge is led by the Public Service Alliance of Canada.

Current Level of Court — PIPSC and CAPE filed a statement of claim on June 29, 2015, with the Ontario Superior Court. PSAC filed a statement of claim on June 30, 2015, with the Ontario Superior Court.

On August 10, the unions filed a notice of motion with the Ontario Superior Court requesting an injunction against the sections of Bill C-59 that allow Treasury Board to take sick leave provisions out of the collective bargaining process.

In correspondence dated January 21, 2016, the Treasury Board advised federal public sector unions that it intended to make the repeal of Division 20 of Bill C-59 one of its first orders of business. The Treasury Board also confirmed that, in the meantime, the government would not exercise the powers contained in that legislation to unilaterally implement a disability and sick leave management system.

As a result of the government's clear commitment in relation to C-59, the unions involved in the C-59 Charter challenge and injunction motion have agreed to adjourn the hearing of the injunction motion indefinitely and to place the substantive case relating to the constitutionality of Division 20 of C-59 in abeyance, pending such time as the offending legislation has been repealed.

Union Legal Counsel — PIPSC and CAPE are represented by Peter Englemann and Colleen Bauman with Sack, Goldblatt and Mitchell, LLP. PSAC are represented by Andrew Raven, a partner with Raven, Cameron, Ballantyne & Yazbeck

Interveners — No interveners at this stage.

ILO Complaint — Canada's 18 federal public service unions announced in May 2015 that they will jointly be filing an ILO complaint against Division 20 of Bill C-59.

Case # 3 Ontario *Labour Relations Act* (1995)

Summary of the Legislation — Section 1 (3) (b) of the Ontario *Labour Relations Act* states that "no person shall be deemed to be an employee who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practice in Ontario and employed in a professional capacity"

Nature of the Court Challenge — Violation of section 2 (d) — freedom of association for denying staff lawyers employed at Legal Aid Ontario the right to join a union of their own choosing and participate in collective bargaining.

Initiators of the Challenge — Society of Energy Professionals, IFPTE Local 160 (the Society) on behalf of staff lawyers employed at Legal Aid Ontario.

Current Level of Court — The Society filed an application on June 4, 2015 in the Ontario Superior Court of Justice.

Union Legal Counsel — The Society is represented by Steve Barrett, a partner with Sack, Goldblatt & Mitchell.

Interveners — No interveners at this stage.

ILO Complaint — No ILO complaint at this stage.

Case # 4 Nova Scotia *Essential Health and Community Services Act,* Bill 37 (April 2014)

Summary of the Legislation — The Act provides for a broad definition of essential services encompassing some 35,000 public employees who work in a range of occupations, including nursing, hospital support workers, group home care, home care, ambulance dispatching and paramedic workers. It mandates that essential services agreements be negotiated prior to any strike action through a process that is heavily weighted in favour of the employer.

A union may apply to the Labour Relations Board for arbitration if it feels that the level of employees designated essential is so high that it has the effect of depriving employees of a meaningful right to strike. If arbitration is granted, the Minister of Labour has the right to choose the method. However, whatever method is chosen by the Minister, the independence is undermined, as the arbitrator is forced consider “the employer's ability to pay in light of the fiscal position of the government” in making an award.

Nature of the Court Challenge — Violation of section 2 (b), freedom of expression, and Section 2 (d), freedom of association, of the Charter. Bill 37 also violates section 15, as it has a discriminatory, adverse impact on employees on the basis of sex, as it disproportionately affects women (approximately 90 per cent of workers affected by this legislation are women).

Initiators of the Challenge — the Nova Scotia Federation of Labour, the Nova Scotia Government and General Employees Union (NSGEU/NUPGE), the Nova Scotia Nurses Union, the Canadian Union of Public Employees and UNIFOR.

Current Level of Court — NSGEU filed a statement of claim on September 12, 2014, with the Supreme Court of Nova Scotia. Parties are presently engaged in a procedural dispute as to whether the matter may proceed by application or action. There is no schedule towards a trial or hearing until that dispute is resolved.

Union Legal Counsel — NSGEU/NUPGE is represented by Ray Larkin with Pink Larkin in Halifax.

Interveners — No interveners at this stage.

ILO Complaint — No complaint has been filed.

Case # 5 Nova Scotia *Essential Home-support Services Act,* Bill 30 (March 2014)

Summary of the Legislation — The legislation ended a two-day strike of some 500 home care workers and forced the workers' unions and their employers to negotiate an essential services agreement prior to a strike or lockout. If the union and the employer are unable to agree to an essential services agreement, the dispute will be referred to the Labour Relations Board to settle the provisions of such an agreement.

Nature of the Court Challenge — Violation of section 2 (d) of the Charter (home support workers' right to bargain collectively), revoking their Charter right to "engage in the expressive activities associated with collective bargaining and the right to strike. Bill 30 also violates section 15, as it has a discriminatory, adverse impact on employees on the basis of sex, as it disproportionately affects women (approximately 90 per cent of workers affected by this legislation are women).

Initiators of the Challenge — the Nova Scotia Government and General Employees Union (NSGEU/NUPGE).

Current Level of Court — A statement of claim was filed on May 20, 2014, with the Supreme Court of Nova Scotia. Parties are presently engaged in a procedural dispute as to whether the matter may proceed by application or action. There is no schedule towards a trial or hearing until that dispute is resolved.

Union Legal Counsel — NSGEU/NUPGE is represented by Ray Larkin with Pink Larkin in Halifax.

Interveners — No interveners at this stage.

ILO Complaint — No complaint has been filed.

Case # 6 Federal *Economic Action Plan 2013 Act, No. 2*, Bill C-4 (December 2013)

Summary of the Legislation — Bill C-4 amends the federal *Public Service Labour Relations Act* (*PSLRA*), making it illegal for any bargaining unit to strike if 80 percent or

more of the positions in that unit are declared necessary for providing an essential service. It also gives the federal government the "exclusive right" to determine which services are essential and the number of positions required to provide those services with a limited consultation process incorporated into the determination process.

Under the former essential services regime, unions and government negotiated the number of employees who were considered essential. If the two sides couldn't agree, the matter was turned over to the Public Service Labour Relations Board to decide which jobs would be considered essential in the event of a strike.

Further changes under the bill include limiting the use of arbitration for resolving disputes. Whereas before unions were free to choose between walking off the job or going through binding interest arbitration, the *PSLRA* now requires the union to proceed by way of conciliation or strike in all cases where the employer designates less than 80 percent of the employees in a unit as essential, unless the employer agrees otherwise.

As well, in the circumstances where the union is entitled to proceed to interest arbitration, the arbitration board must now take into account the government's "fiscal circumstances relative to its stated budgetary policies," as a primary consideration in making its decision.

Nature of the Court Challenge — Violation of the Charter's section 2 (b), rights to freedom of expression, and section 2 (d), freedom of association, (denies the right to strike).

Initiators of the Challenge — Two separate applications were filed: one by the Public Service Alliance of Canada (PSAC) and the other by the Professional Institute of the Public Service of Canada (PIPSC), however both will be litigated together.

Current Level of Court — PSAC file an application with the Ontario Superior Court of Justice on March 24, 2014; PIPSC filed it application on May 14, 2014. PIPSC and PSAC have obtained case management from the Court to help with the scheduling of this matter. A case conference was held on September 22, 2015. With the consent of all parties, PIPSC and PSAC will be requesting that this matter be heard in June 2016. Preparation of affidavit evidence is well underway in this matter.

The federal government also informed both unions that it intends to engage in consultation with public sector partners to revisit legislative provisions introduced through Bill C-4. The unions are still considering the impact of the government’s commitments in relation to Bill C-4 on the constitutional challenge to that legislation.

Union Legal Counsel — PSAC are represented by Andrew Raven, a partner with Raven, Cameron, Ballantyne & Yazbeck. PIPSC is represented by Peter Engelmann and Colleen Bauman, from Goldblatt Partners.

Interveners — No interveners at this stage.

ILO Complaint — Canada's 18 federal public service unions filed an ILO complaint against Bill C-4 in May 2015. It has yet to be examined by the ILO's Committee on Freedom of Association.

Case # 7 Ontario *Putting Students First Act*, Bill 115 (September 2012)

Summary of the Legislation — The Act amends the *Education Act,* requiring collective agreements between school boards and employees to not include compensation increases for a two-year period beginning September 1, 2012. The legislation eliminates the accumulation of sick leave credits after August 31, 2012. It also outlaws strikes and lockouts without providing for independent binding arbitration. Bill 115 gives the Minister of Education unprecedented powers, including the right to deny strikes and lockouts and impose terms in collective agreements at any time.

Nature of Court Challenge — Violation of section 2 (d) of the Charter (denies collective bargaining and right to strike).

Initiators of the Challenge — the Ontario Secondary School Teachers' Federation (OSSTF), the Elementary Teachers' Federation of Ontario (ETFO), the Canadian Union of Public Employees (CUPE) and the Ontario Public Service Employees Union (OPSEU/NUPGE) have each filed a court challenge.

Current Level of Court — In early March 2014, Justice Himel of the Ontario Superior Court of Justice, at the request of the Ontario Attorney General's legal counsel, granted a postponement of the hearing date initially scheduled for June 2014. The decision to postpone the hearing date was based on the fact that three cases similar to the Bill 115 case were heard in February and May 2014 before the Supreme Court of Canada. (The SCC decisions on those three cases were released in January 2015: *SFL et al. v. Saskatchewan* (see Case # 17 below), *Mounted Police Associations of Ontario and B.C. v. Canada (Attorney General)* (see Case # 18 below), and *Meredith and Roach v. Canada (Attorney General)* (see Case # 19 below).

A hearing for the case took place at the Ontario Superior Court of Justice during the week of December 14–18, 2015.

Union Legal Counsel — OSSTF is represented by Susan Ursel, a partner with Ursel, Phillips Fellows & Hopkinson; ETFO is represented by Steve Barrett, a partner with Sack, Goldblatt & Mitchell; CUPE is represented by Andrew Lokan, a partner with Paliare, Roland, Rosenberg & Rothstein; and OPSEU is represented by David Wright, a partner with Ryder, Wright, Blair & Holmes.

Interveners — Employer-side: Ontario Public School Boards Association

Union-side: Canadian Civil Liberties Association
UNIFOR

ILO Complaint — A complaint (Case No. 3003) was filed by the Elementary Teachers' Federation of Ontario in January 2013. The ILO Committee on Freedom of Association has not yet dealt with the complaint.

Case # 8 Federal *Act to Provide for the Continuation and Resumption of Air Service Operation,* Bill C-33 (March 2012)

Summary of the Legislation — The Act substantially interfered in the collective bargaining process between Air Canada and its 8,200 technical, maintenance, and operational support employees represented by the International Association of Machinists and Aerospace Workers (IAMAW), and the airline's 3,000 pilots represented by the Air Canada Pilots Association (ACPA). The legislation prevented both unions from taking strike action and sent both disputes to a biased arbitration process.

Nature of the Court Challenge — Violation of section 2 (d) and 2(b) of the Charter (denies collective bargaining and right to strike and freedom of expression).

Initiators of the Challenge — The IAMAW and the ACPA have each filed a court challenge.

Current Level of Court — A challenge was filed in March 2012 at the Ontario Superior Court of Justice. The Applicants are in the process of completing their reply record. Air Canada's motion to intervene in the proceedings is pending.

Union Legal Counsel — IAMAW is represented by CFLR Board member Paul Cavalluzzo and Adrienne Telford, both with Cavalluzzo, Shilton, McIntyre & Cornish, and ACPA is represented by Steve Waller of Nelligan, O'Brien & Payne.

Interveners — Employer-side: Air Canada has indicated its intent to seek leave to intervene but has not yet filed its motion materials.

ILO Complaint — A complaint (Case No. 2983) was filed by IAMAW in September 2012. The ILO Committee on Freedom of Association ruled in October 2013 that Bill C-33 violated the ILO's freedom of association principles.

Case # 9 Federal *Restoring Mail Delivery for Canadians Act,* Bill C-6 (June 2011)

Summary of the Legislation — This legislation forced locked-out postal workers back to work. It imposed wage increases that were less than the employer's last offer, and referred all other outstanding issues to final offer arbitration. The legislation also restricted the impartiality of the arbitrator in deciding on a settlement.

Nature of Court Challenge — Violation of section 2 (d) and 2(b) of the Charter (denies collective bargaining and right to strike and freedom of expression).

Initiator of the Challenge — The Canadian Union of Postal Workers (CUPW)***.***

Current Level of Court — The challenge was filed in the Ontario Superior Court of Justice in October 2011. A hearing before the Ontario Superior Court was scheduled for the week of October 5, 2015.

Union Legal Counsel — CUPW is represented by CFLR Board member Paul Cavalluzzo and Adrienne Telford, both with Cavalluzzo, Shilton, McIntyre & Cornish.

Interveners — Employer-side: Canada Post Corporation
FETCO (Federally Regulated Employers - Transportation and Communications) — brought a motion to intervene but was denied leave.

ILO Complaint — A complaint (Case No. 2894) was filed by CUPW in August 2011. The ILO Committee on Freedom of Association ruled in June 2013 that Bill C-6 violated the ILO's freedom of association principles.

Case # 10 British Columbia *Education Improvement Act*, Bill 22 (March 2012)

Summary of the Legislation — Bill 22 took away the right to strike from B.C.'s 41,000 public school teachers, imposed a wage freeze, unilaterally voided terms from the teachers' collective agreements and prohibited collective bargaining on certain working conditions, including class sizes and student supports.

The legislation also reintroduced parts of the *Education Services Collective Agreement Act,* (Bill 27), passed by the Liberal government in 2002, which prohibited bargaining on class size, class composition, and the ratios of teachers to students. In April 2011, the B.C. Supreme Court ruled that those sections of Bill 27 were unconstitutional and in breach of the section 2 (d) of the Charter.

Nature of Court Challenge — Provisions in Bill 22 that prohibited bargaining on class size, class composition, and the ratios of teachers to students are a violation of section 2 (d) Charter rights.

Initiator of the challenge — B.C. Teachers' Federation (BCTF).

Current Level of Court — On April 30, 2015, the BC Court of Appeal (BCCA) ruled in favour of the government. In a 4-1 decision, the Court overturned Justice Susan Griffin's two rulings at the BC Supreme Court that the government failed to consult with the BCTF in good faith and denied teachers their freedom of association.

On January 14, 2016, the Supreme Court of Canada granted the BC Teachers' Federation leave to appeal.

The April 2015 ruling means legislation enacted in 2012 by the provincial government, which held that class sizes and class composition could not be collectively bargained, is legal. The Court found that "between the consultations and the collective bargaining leading up to the legislation, teachers were afforded a meaningful process in which to advance their collective aspirations" and therefore their freedom of association 2 (d) right was respected. The Court also overturned the decision of Justice Griffin to award two million in Charter damages to the BCTF.

In contrast with the BCAA majority, Justice Donald dissented in upholding the finding of Justice Griffin that the government did not engage in good faith consultations with the teachers before passing the legislation. As a result, Justice Donald found the legislation to infringe section 2 (d) of the Charter and to not be justified under section 1.

BCFT has sought leave to appeal to the Supreme Court of Canada.

Previous Judgements on This Case —In January 2002, the *Education Services Collective Agreement Act*, and the *Public Education Flexibility and Choice Act*, (collectively, Bill 28) were enacted. Bill 28 declared void certain terms of the expired collective agreement continuing in force between BCTF and the British Columbia Public School Employers' Association (BCPSE"). Bill 28 also prohibited the inclusion of similar terms in all future collective agreements between the BCTF and the BCPSEA. The BCTF was not consulted before Bill 28 was enacted.

In May 2002, the BCTF commenced a constitutional challenge. It submitted that Bill 28 unjustifiably infringed teachers' freedom of association as guaranteed by section 2 (d) of the Charter. With the consent of BCTF, the action was held in abeyance for several years as a similar constitutional challenge wound its way up to the Supreme Court of Canada (*BC Health Services*, 2007 SCC 27). In June 2006, the BCTF and the BCPSEA agreed to a new five-year collective agreement.

On 13 April 2011, Madam Justice Griffin of the BC Supreme Court held that Bill 28 infringed teachers' freedom of association in two ways: first, by declaring void certain terms of the collective agreement then in force; and second, by effectively prohibiting collective bargaining on the subject matter of those terms in the future. She found that this infringement was not demonstrably justified under section 1 of the Charter. She declared certain sections of Bill 28 to be unconstitutional and invalid, although she suspended her declaration of invalidity for one year to allow the government time to address the repercussions of the decision and consider remedial legislation. The Province chose not to appeal.

In the year that followed (2012), the government and the BCTF discussed the implications of the Bill 28 decision, and the BCPSEA and the BCTF engaged in collective bargaining. Their collective agreement expired on 30 June 2011 (though it provided that its terms would remain in effect until a new agreement was reached). The discussions and collective bargaining did not lead to a new agreement, nor did they resolve the issues arising from the Bill 28 decision, within the one-year suspension of the declaration of invalidity.

In March 2012, the government introduced new legislation, the *Education Improvement* (Bill 22), which formed the basis of another freedom of association section 2 (d) Charter challenge filed by BCTF. Like Bill 28, Bill 22 declared void every term of the expired collective agreement between the BCPSEA and the BCTF which had the effect of:

- restricting or regulating a school board's power to establish class size and class composition;
- establishing or imposing class size limits, requirements respecting average class sizes, or methods for determining class size limits or average class sizes;
- restricting or regulating a school board's power to assign a student to a class, course or program;
- restricting or regulating a school board's power to determine staffing levels or ratios or the number of teachers or other staff;
- establishing minimum numbers of teachers or other staff;
- restricting or regulating a school board's power to determine the number of students assigned to a teacher; or,
- establishing maximum or minimum caseloads, staffing loads or teaching loads.

In January 2014, the BC Supreme Court decision found Bill 22's provision preventing the union to negotiate class size and composition, breached section 2 (d). The Court ordered retroactive reinstatement of the union's right to negotiate class size and composition and ordered the government to pay $2 million in damages under section 24 of the Charter.

The April 2015 decision at the BCCA is surprising in the context of *BC Health Services*, which noted the importance of "meaningful" consultation by governments with unions before passing legislation affecting collective bargaining rights. Meaningful consultation

is the standard to be met to uphold the right to freedom of association under the Charter.

Yet, on the facts of the case, there is no doubt that the government did not consult with BCTF in any meaningful way before going ahead with the legislation—legislation that limited the scope and topics of collective bargaining. Indeed, this was the finding of the trial judge based on the evidence before her.

With respect to the majority of the BCCA, it appears that they erred in their standard of review of Justice Griffin's factual findings. Furthermore, given the decision in *SFL*, it is doubtful that the SCC will uphold this view if the appeal is heard of BCTF.

Union Legal Counsel — BCTF is represented by John Rogers, a partner with Victory Square Law Office.

Interveners — Employer side - The Coalition of British Columbia Businesses

ILO Complaint — There was no ILO complaint submitted against Bill 22. However with respect to Bill 22's forerunner legislation, Bill 28, the ILO ruled on two complaints against Bill 28 in March 2004 — one complaint submitted by the National Union of Public and General Employees (NUPGE) (Case No. 2166) and one submitted by the B.C. Teachers' *Federation* (Case No. 2173). The ILO Committee on Freedom of Association found Bill 28 not to comply with ILO freedom of association principles.

Case # 11 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009)

Summary of the Legislation — This Act, as part of the federal government's 2009 *Budget Implementation Act*, Bill C-10, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases, such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

Nature of the Court Challenge — Violation of section 2 (d) of the Charter (denies collective bargaining and right to strike).

Initiators of the Challenge — Association des réalisateurs de Radio-Canada (independent union) and Canadian Union of Public Employees (CUPE) Local 675.

Current Level of Court — On May 24, 2014, the Québec Court of Appeal overturned a July 2012 ruling of the Québec Superior Court that found the ERA in violation of section 2 (d) of the Charter.

On February 2, 2015, however, the Supreme Court of Canada (SCC) referred the case back to a different panel of the Québec Court of Appeal (QCA), to rule once again on the appeal in light of the SCC's decision on *Meredith and Roach v. Canada (Attorney General) (*see Case # 19 below). The new hearing took place in June 2015 and the QCA ruling was released February 2, 2016.

The Court ruled that the act interfered with collective bargaining because of the wage restrictions it imposes on the employees. It also found, however, that given the fact that the true bargaining channels had been maintained, the infringement could not be characterized as substantial because the good faith consultation and bargaining processes had been kept intact. The Court noted that the fact that wage increases were capped, rather than prohibited, and employees were barred from making any future claims for amounts lost during the restraint period, meant that the act did not infringe on the employees' freedom of choice or their capacity to pursue collective goals through an effective process. The Court therefore ruled that the employees' freedom of association under section 2 (d) of the Charter was not breached.

Furthermore, the Court found that the goals of the act were legitimate in light of the economic conditions at the time and the need to reduce the strain on federal public finances and that the means used were proportionate to the objectives. The Court also found that even if a fundamental right had been breached, that breach would be justified under section 1 of the Charter.

It is not known whether Association des réalisateurs de Radio-Canada and/or Canadian Union of Public Employees (CUPE) Local 675 will seek leave at the Supreme Court of Canada to appeal this decision.

There are currently four other section 2 (d) challenges against the *Expenditure Restraint Act* (ERA) (see Cases #12, #13, #14 and #15 below). Also, in February 2013, the SCC denied leave for appeal on another Bill C-10 case (see Case # 23 below).

Previous Judgements on this Case — On July 12, 2012, the Québec Superior Court ruled that because the ERA retroactively changed the collective agreement of members of the Association des réalisateurs de Radio Canada and CUPE Local 67, it deprived them of their right to engage in meaningful collective negotiations with their employer over the terms of their employment, in violation of section 2 (d) of the Charter.

The Court also decided that the ERA was a justified infringement under section 1 of the Charter. However, with respect to this case, the Court found that the application of the ERA to Radio-Canada's agreement with its employees is not rationally connected to section 1. The reason the Court gave for this finding was that the federal government's financing of Radio-Canada is not linked to the contracts Radio-Canada negotiates with its employees.

Union Legal Counsel — The Association des réalisateurs de Radio-Canada is represented by Jean-Pierre Belhumeur, a partner with Stikeman, Elliot, SENCRL and CUPE Local 67 is represented by internal counsel Annick Desjardins.

Interveners — There are no interveners.

ILO Complaint — The Confédération des syndicats nationaux (CSN), on behalf of the Union of Canadian Correctional Officers, filed a complaint against Bill C-10. The ILO Committee on Freedom of Association found Bill C-10 violated the ILO's freedom of association principles (Case No. 2821).

Case # 12 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009)

Summary of the Legislation — This Act, as part of the federal government's 2009 *Budget Implementation Act*, Bill C-10, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases, such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

Nature of Court Challenge — Violation of section 2 (d) of the Charter (denies collective bargaining and right to strike).

Initiators of the Challenge — Federal Government Dockyard Trades and Labour Council.

Current Level of Court — In September 2011, the B.C. Supreme Court dismissed the Dockworkers challenge. The Dockworkers appealed the decision to the B.C. Supreme Court of Appeal; however, on August 19, 2013, the Court of Appeal upheld the lower court's decision. The Dockworkers then decided to appeal to the Supreme Court of Canada. The SCC decided to wait to rule on the Dockworkers' application for leave to appeal until it has rendered its decision in *Meredith and Roach v. Canada (Attorney General)* (see Case # 19 below). That decision was released on January 16, 2015.

In light of its January 16, 2015, decision, the SCC ordered the B.C. Supreme Court of Appeal (BCCA) to reconsider its May 2014 decision. A new hearing took place at the BCCA on November 5 and 6, 2015.

There are currently four other section 2.(d) challenges against the *Expenditure Restraint Act* (ERA) (see Cases #11 above and Cases #13, #14 and #15 below). Also, in February 2013, the SCC denied leave for appeal on another Bill C-10 case (see Case # 23 below).

Previous Judgments on This Case — The Dockworkers argued that the ERA affected them in a different manner than other federal public servants by eliminating a pay increase awarded to them by arbitration in January 2009, but which had been retroactive to October 1, 2006, more than two years prior to the introduction of the ERA. They suggested that every other group who had their pay increases for the period of 2006 to 2008 determined before the introduction of the ERA in January 2009 were allowed to keep those increases, whether or not they were consistent with the salary caps set out in the ERA.

On September 8, 2011, the B.C. Supreme Court dismissed the Dockworkers' challenge on primarily three points. First, it held that because the award was achieved through the arbitration process, it did not receive the same constitutional protection that is afforded to collective agreements reached outside that process. Second, the Court held that there was no interference with the Dockworkers' constitutional rights because the government was operating in a climate of intense economic uncertainty and gave some warning that they would be proceeding with the ERA. Finally, the Court held that the significant economic crisis that affected Canada in 2008 meant the legislation was required under section 1 of the Charter.

The Dockworkers appealed to the B.C. Supreme Court of Appeal, and on August 19, 2013, the Appeal Court upheld the B.C. Supreme Court decision.

Union Legal Counsel — The Dockyard Trades and Labour Council are represented by Joseph Arvay, a partner with Arvay & Finlay.

Interveners — Employer-side: B.C. Attorney General

ILO Complaint — The Confédération des syndicats nationaux (CSN), on behalf of the Union of Canadian Correctional Officers, filed a complaint against Bill C-10. The ILO Committee on Freedom of Association found Bill C-10 violated the ILO's freedom of association principles (Case No. 2821).

Case # 13 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009) and the *Public Sector Equitable Compensation Act*, also a part of Bill C-10 (March 2009)

Summary of the Legislation — The *Expenditure Restraint Act* (ERA), as part of the federal government's 2009 *Budget Implementation Act*, Bill C-10, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases, such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

The *Public Sector Equitable Compensation Act* (PSECA), also a part of Bill C-10, removed the right of public sector workers to collectively file complaints for pay equity with the Canadian Human Rights Commission, thereby forcing women to file complaints as individuals. It imposes a $50,000 fine on any union that encourages or assists their own members in filing a pay equity complaint. The litigation with respect to PSECA has been bifurcated and placed in abeyance pending the coming into force of the PSECA Regulations which are still pending.

Nature of Court Challenge — Both Acts are in violation of section 2 (d) of the Charter (they deny collective bargaining and the right to strike), and the PSECA is also in violation of section 15 (equality rights)

Initiator of the Challenge — Professional Institute of the Public Service of Canada (PIPSC).

Current Level of Court — This case was heard jointly with a similar challenge filed by the PSAC *(*see Case # 14 below) at the Ontario Superior Court of Justice in November 2013. The court delivered its decision on February 12, 2014, and denied both the PIPSC's and the PSAC's applications, ruling that "the wage restraints imposed by the legislation do not demonstrate substantial interference with the freedom of association."

Both PIPSC and PSAC were waiting for the SCC decision on another Bill C-10 case — *Meredith and Roach v. Canada (Attorney General)* (see Case # 19 below) — before moving to an appeal with their matters. In *Meredith*, the SCC found that the government's decision to unilaterally roll back scheduled wage increases for RCMP members did not violate the Charter rights. Even after considering that a constitutional breach was not found in *Meredith*, the SCC nevertheless changed the legal landscape with respect to constitutional protections around the bargaining process. Because labour rights have shifted considerably, the SCC ordered that a new hearing to be held for two other cases awaiting leave to the SCC on the issue of the ERA at the time (See Cases #11 and #12 above). Both PIPSC and PSAC presented at a joint hearing at the Ontario Court of Appeal on November 17, 18, and 19, 2015, and the parties are now awaiting a decision.

Previous Judgements on This Case — By order of the Court, the unions are proceeding only with the ERA challenge at this time, as the PSECA regulations have not been enacted. Both PIPSC and PSAC may proceed with the PSECA challenge when the regulations are enacted.

Both PIPSC and PSAC contend that the ERA violates the right to freedom of association guaranteed by the *Charter* because it compromises the essential integrity of the collective bargaining process by retroactively invalidating provisions of existing collective agreements and undermining future bargaining.

The unions' challenge to the PSECA contends that the Act goes against the fundamental right to equal pay for work of equal value, as protected by the equality rights enshrined in the Charter, by not providing an adequate mechanism to address wage discrimination at the bargaining table.

Union Legal Counsel — PIPSC is represented by Fay Fararday of Faraday Law.

Interveners — There are no interveners at this time.

ILO Complaint — The Confédération des syndicats nationaux (CSN), on behalf of the Union of Canadian Correctional Officers, filed a complaint against Bill C-10. The ILO Committee on Freedom of Association found Bill C-10 violated the ILO's freedom of association principles (Case No. 2821).

Case # 14 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009) and the *Public Sector Equitable Compensation Act,* also a part of Bill C-10 (March 2009)

Summary of the Legislation — The *Expenditure Restraint Act* (ERA), as part of the federal government's 2009 *Budget Implementation Act*, Bill C-10, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases, such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

The *Public Sector Equitable Compensation Act* (PSECA), also a part of Bill C-10, removed the right of public sector workers to collectively file complaints for pay equity with the Canadian Human Rights Commission, thereby forcing women to file complaints as individuals. It imposes a $50,000 fine on any union that encourages or assists their own members in filing a pay equity complaint.

Nature of Court Challenge — Both Acts are in violation of section 2 (d) of the Charter (they deny collective bargaining and the right to strike), and the PSECA is also in violation of section 15 (equality rights).

Initiator of the Challenge — Public Service Alliance of Canada (PSAC).

Current Level of Court — This case has identical status as Case # 13 above.

Previous Judgements on This Case — This case has identical status as Case # 13 above.

Union Legal Counsel — PSAC are represented by Andrew Raven, a partner with Raven, Cameron, Ballantyne & Yazbeck.

Interveners — There are no interveners.

ILO Complaint — The Confédération des syndicats nationaux (CSN), on behalf of the Union of Canadian Correctional Officers, filed a complaint against Bill C-10. The ILO Committee on Freedom of Association found Bill C-10 violated the ILO's freedom of association principles (Case No. 2821).

Case # 15 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009) and the *Public Service Labour Relations Act*, PSLRA (November 2003)

Summary of the Legislation — The *Expenditure Restraint Act* (ERA), as part of the federal government's 2009 *Budget Implementation Act*, Bill C-10, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases, such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

The *Public Service Labour Relations Act* (PSLRA) is the legislation that governs collective bargaining between the federal government and unions representing federal public service employees. Section 113 of the PSLRA restricts the scope of bargaining in the federal public service by prohibiting bargaining and inclusion in a collective agreement, of a large number of significant workplace issues including pensions, classifications, staffing and key elements of job security.

Nature of Court Challenge — The ERA is a violation of section 2 (d) of the Charter (denies collective bargaining and the right to strike) and section 113 of the PSLRA violates of section 2 (d) because it denies federal public service employees from bargaining collectively key provisions related to their working conditions.

Initiators of the Challenge — Confédération des syndicats nationaux (CSN) / Union of Canadian Correctional Workers.

Current Level of Court — The case is still pending before the Québec Superior Court.

There are currently four other section 2 (d) challenges against the *Expenditure Restraint Act* (ERA) (see Cases # 11, # 12, # 13, and # 14 above). Also, on January 16, 2015, the SCC ruled in *Meredith and Roach v. Canada (Attorney General*) that despite the constitutional deficiencies of the ERA, Section 2 (d) was not a breach (see Case # 19 below), but two days later, the SCC asked lower courts to review their decisions, and

these courts found the ERA was unconstitutional (see Cases # 11 and # 13 above). In 2013, denied leave for appeal on another Bill C-10 Case (see Case # 23 below).

Union Legal Counsel — CSN / Union of Canadian Correctional Workers are represented by Eric Levesques with Laroche Martin law firm.

Interveners — There are no interveners.

ILO Complaint — The Confédération des syndicats nationaux (CSN), on behalf of the Union of Canadian Correctional Officers, filed a complaint against Bill C-10. The ILO Committee on Freedom of Association found Bill C-10 violated the ILO's freedom of association principles (Case No. 2821).

Case # 16 **Manitoba — This is a challenge to Manitoba Hydro's policy of having employees join a union as a prerequisite to be able to work on major hydroelectric projects.**

Summary of the Legislation — Section 76 of the Manitoba *Labour Relations Act*, C.C.S.M c. L10 (LRA), provides that all collective agreements must contain a compulsory check-off clause. Section 6 does not require employees to pay dues to a union that has not been chosen to represent them according to the procedure stipulated by the LRA.

Nature of Court Challenge — The plaintiffs argue that the provisions of the collective agreements that create union shops and impose compulsory union dues ("check-off") on employees, as well as Manitoba Hydro's policy of having employees join a union as a prerequisite to be able to work on major hydroelectric projects, are a violation of workers' freedom of expression rights and freedom of association rights (sections 2 (b) and 2 (d) respectively) of the Charter. The plaintiffs also seek a declaration that section 76 of the LRA does not require employees to pay dues to a union that has not been chosen to represent them according to the procedure stipulated by the LRA. Alternatively, they seek a declaration that if section 76 is read to apply in such circumstances, the section infringes on sections 2 (b) and 2 (d) of the Charter.

Initiators of the Challenge — The Merit Contractors Association of Manitoba with a group of five individual contractors (Barry Millen, Terri Fordham, Rick Lesiuk, Floyd Stoneham and Michel Paul Pilotte).

Current Level of Court — In June 2012, Merit Contractors filed lawsuit as a Charter challenge with the Manitoba Court of Queen's Bench against Manitoba Hydro, the Hydro Projects Management Association (HPMA), Allied Hydro Council (AHC) and the Locals of the International Association of Heat and Frost Insulators and Allied Workers, IBEW Local 2034, and Operating Engineers Local 897 (Case CI12-01-78487). The Court has held a number of hearings on contested motions throughout 2013 and this year.

On May 25, 2015, the Court of Queen's Bench of Manitoba ruled on a challenge from the three unions to the jurisdiction of the court to hear the case, arguing that the appropriate jurisdiction falls under the Labour Board or an Arbitrator. This challenge was heard in February 2015. Justice Greenberg ruled in favour of the union's challenge, stating that "the Manitoba Labour Board is the proper forum for determination of the issues raised in the plaintiffs' claim."

Merit Contractors have appealed the decision and all appeal materials have been filed. The Court of Appeal is attempting to set dates and right now it looks like the appeal will be heard either March 9 (likely) or April 11–15, 2016.

Union Legal Counsel — Allied Hydro Council of Unions, the International Brotherhood of Electrical Workers, Local 2034, and the International Union of Operating Engineers, Local 987 are represented by Tony Marques and Shannon Carson with Myers Weinberg LLP.

Manitoba Hydro-Electric Board, is represented by in-house counsel, Janet Mayor and Odette Fernandes. Hydro Projects Management Association is represent by Kristin Gibson, a partner with Atkins Law.

Merit Contractors are represented by Peter Gall, a well-known management lawyer, who is a partner with Gall Legge Grant and Munroe. He was formerly a partner with Heenan Blaikie LLP.

Interveners —The Attorney General of Manitoba intervened on the defendants' side.

SUPREME COURT OF CANADA JANUARY 2015 DECISIONS

Case # 17 Saskatchewan *Public Service Essential Services Act,* Bill 5 (June 2008) and the *Trade Union Amendment Act*, Bill 6 (June 2008)

Summary of the Legislation — Bill 5 allows for the employer to unilaterally designate essential employees if the employer and the union are unable to reach a negotiated essential services agreement. It also allows employers to increase essential service designations during a strike, thereby having the unfettered ability to determine how effective a strike will be at any stage of the job action.

Bill 6 eliminated card-based certification and expanded the employer's ability to communicate its opinions to its employees regarding union activities and functions.

Nature of Court Challenge — Violation of section 2 (d) of the Charter. The real substance of this revolves around Bill 5, which basically denies the right to strike.

Initiators of the Challenge — The Saskatchewan Federation of Labour (SFL) and several SFL affiliates.

Current Level of Court — The decision from the Supreme Court of Canada (SCC), released on January 30, 2015, is one of the most significant cases for the labour movement in the past three decades. The SSC confirmed in a five to two majority decision that the right to strike is a constitutional right for all workers in Canada, regardless of whether they work in the private sector or the public sector.

This case, brought forward by the Saskatchewan Federation of Labour and several of its affiliates involved a Charter challenge against two labour laws passed by the Wall government in June 2008: Bill 5, *Public Service Essential Services Act* and Bill 6, *Amendments to the Trade Union Act.* The case, however, had been primarily against Bill 5 which broadened the scope of essential service employees to the point that the legislation effectively took away the right to strike of almost all public sector workers in Saskatchewan.

The SCC ruled that "the conclusion that the right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations is supported by history, by jurisprudence, and by Canada's international obligations" (para. 3) and therefore found the *Public Service Essential Services Act* unconstitutional.

The majority explicitly overturned the 1987 *Alberta Reference* case, and endorsed the progressive and influential dissent in that judgment by then-Chief Justice Dickson. The majority held that the right to strike is an "indispensable component" of collective bargaining and thus freedom of association (see paras. 4 and 75).

Significantly, the Court also found that any legislation which “prevents designated employees from engaging in *any* work stoppage as part of the bargaining process” constitutes a violation of section 2 (d) of the Charter and must be justified by the government under section 1 (see para. 78). In other words, whenever a government abrogates the right to strike, there is a presumption that it violates the Charter and the onus shifts to the government to demonstrate that the measure is rational, justifiable, and minimally impairs the right.

The Court also made it clear that restrictions on strikes for workers who perform essential services may be justifiable under section 1, but there must be an “independent review mechanism” to determine whether services are truly essential, and further there needs to be a “meaningful dispute resolution mechanism” to resolve the bargaining impasse for workers who can’t strike (para. 81). This means:

- An essential service cannot be unilaterally designated, but, properly interpreted, must be one “the interruption of which would threaten **serious harm** to the general public or to a part of the population” (para. 84, quoting Dickson). In same paragraph, Dickson quotes the ILO on essential services being those that, if interrupted, “would endanger the life, personal safety or health of the whole or part of the population”. See also para. 86.
- Affected employees should only be required to perform essential services, and not non-essential work during strike action. (para. 91)
- The designation of essential services and the workers who must perform them needs to be subject to “an impartial and effective dispute resolution process” (para. 92). In other words, the labour board must be involved.
- Where the right to strike must be abrogated to protect essential services, some kind of independent arbitration to deal with the bargaining impasse will “almost always” be required. (see paras. 93-95)

The consensus is that this judgment is a landmark win for labour. It is particularly strong for public employees of any stripe — municipal, provincial, or federal — as the Court effectively constitutionalizes the meaning of “essential services” as those services that, if withdrawn, would seriously threaten or endanger public health or safety.

On a final note, the Court strongly supported the arguments on international law (paras. 62-71). Among other things, the Court stressed that certain treaties explicitly protect the right to strike. The Court did not explicitly endorse the rulings of the International Labour Organization (ILO) Committee on Freedom of Association (CFA) however it did point that the CFA decisions are “relevant and persuasive.” That said, the Court referred to CFA decisions as “jurisprudence and found that “it has been the leading interpreter of the contours of the right to strike” (para. 69).

There are three other cases before the Courts concerning similar essential services legislation which will be impacted by this decision:

- the April 2014 Nova Scotia Bill 37, *Essential Health & Community Services Act* (see Case # 4 above)
- the March 2014 Nova Scotia Bill 30, *Essential Home-support Services Act* (see Case # 5 above)
- the December 2013 federal Bill C-4, *Economic Action Plan 2013 Act* (see Case # 6 above)

Previous Judgments on This Case — On February 7, 2012, the Saskatchewan Court of Queen's Bench (CQB) Justice Dennis Ball released his decision that found the provincial government's *Public Service Essential Services Act* (Bill 5) violated the constitutional right to strike and bargain collectively as upheld in the Charter. He found that Bill 6 did not violate the Charter. In his decision, Justice Ball concluded:

> "No other essential services legislation in Canada comes close to prohibiting the right to strike as broadly, and as significantly, as the PSES Act. No other essential services legislation is as devoid of access to independent, effective dispute resolution processes … None have such significantly deleterious effects on protected rights. I am satisfied that the right to strike is a fundamental freedom protected by s.2(d) of the Charter along with the interdependent rights to organize and to bargain collectively. That conclusion is grounded in Canada's labour history, recent Supreme Court of Canada jurisprudence and labour relations realities. It is also supported by international instruments which Canada has undertaken to uphold . . . "The ultimate truth of free collective bargaining is that it can only operate effectively, in market terms, if it is backed up by the threat of economic sanction." (2012SKQB 62)

In April 2013, the Saskatchewan Court of Appeal (COA) overturned the February 2012 decision of the CQB. The COA decision addressed a number of issues, however, the key issue was whether or not the right to strike is covered by the freedom of association protected by section 2 (d) of the Charter. The pivotal question was whether the 2007 *B.C. Health Services* decision and the 2011 *Fraser* decision, of the Supreme Court of Canada had overturned the *Labour Trilogy* from the 1980s, i.e. in relation to whether the right to strike, in addition to, or as part of, the right to bargain collectively) was protected by section 2 (d).

The COA determined this was not the case and by application of the principle of s*tare decisis* (to stand by settled matters). The COA held that it and the Queen's Bench were bound to follow the Supreme Court's precedent and hold that the *Trilogy* still stood and the section 2 (d) claim must fail. The Court concluded that if the line of reasoning regarding the right to strike is to be overturned, only the Supreme Court of Canada can do so.

Union Legal Counsel — The counsel for SFL et al. were Craig Bavis with Victory Square Law Office, Rick Engel with Gerrand Rath Johnson LLP, and Peter Barnacle with the W Law Group

Interveners — Employer-side: Canada (Attorney General)
Attorney General of Ontario
Attorney General of Quebec
Attorney General of British Columbia
Attorney General of Alberta
Attorney General of Newfoundland and Labrador
Regina Qu'Appelle Regional Health Authority
Saskatchewan Chamber of Commerce
University of Regina
Canadian Constitution Foundation
Conseil du patronat du Québec
Canadian Post Corporation

Union-side: Canadian Labour Congress
National Union of Public and General Employees
Saskatchewan Union of Nurses
Service Employees International Union (West)
Saskatchewan Government and General Employees' Union
Canadian Union of Postal Workers and International Association of Machinists and Aerospace Workers (IAMAW)
United Nurses of Alberta and Alberta Federation of Labour
Service Employees International Union (SEIU West)
Confederation des syndicats nationaux
Professional Institute of the Public Service of Canada
Public Service Alliance of Canada
Alberta Union of Provincial Employees
British Columbia Teachers' Federation
Air Canada Pilots' Association
British Columbia Civil Liberties Association

ILO Complaint — The ILO ruled in October 2011 on complaints (Case No. 2654) submitted by the National Union of Public and General Employees (NUPGE) and the SFL in June 2008. Both laws were found not to comply with ILO freedom of association principles. The ILO Committee on Freedom of Association will be reviewing this case at one its upcoming sessions in order to examine the progress made by the Saskatchewan government in implementing its October 2011 recommendations.

Case # 18 Federal *Public Service Labour Relations Act,* PSLRA (Section 2 (1) (d)) and *Royal Canadian Mounted Police Act Regulations (Sections 41 and 96)*

Summary of the Legislation — Section 2(1) (d) of the PSLRA excludes members of the RCMP from engaging in collective bargaining. Section 41 prohibits members of the RCMP from publicly criticizing the police force. Section 96 of the Regulations of the *RCMP Act* establishes a separate scheme (different than collective bargaining) to deal with labour relations between RCMP officers and management.

Nature of Court Challenge — Violation of section 2(b) (freedom of expression), section 2 (d) (freedom of association) and section 15 (equality rights) of the Charter.

Initiators of the Challenge — The Mounted Police Association of Ontario and the B.C. Mounted Police Professional Association.

Current Level of Court — The Supreme Court of Canada's (SCC) decision was released on January 16, 2015. The SCC ruled in favour of the two Mounted Police Associations.

The SCC concluded that the Charter's

> "section 2. (d) guarantee of freedom of association protects a meaningful process of collective bargaining that provides employees with a degree of choice and independence sufficient to enable them to determine and pursue their collective interests. The current RCMP labour relations regime denies RCMP members that choice, and imposes on them a scheme that does not permit them to identify and advance their workplace concerns free from management's influence. (para 5, 2015 SCC1, Case number 34948)

Accordingly, the SCC allowed the appeal and found that section 96 of the *Royal Canadian Mounted Police Regulations, 1988,* is inconsistent with section 2. (d) of the Charter. The SCC also found that the exclusion of RCMP members from collective bargaining under para. (d) of the definition of "employee" in section 2 (1) of the PSLRA infringes section 2 (d) of the Charter. The Court ruled that neither infringement is justified under section 1 of the Charter.

The Court gave the government a 12-month window to draft new compliant legislation. On January 15, 2016, the Supreme Court of Canada granted the federal government's request for an extension of time to pass new legislation. While the government had originally requested an extension of six months, the Court granted an extension of only four months.

The decision may also carry positive implications for other groups of workers still excluded from collective bargaining legislation, both in the private and public sectors.

Previous Judgements on This Case — In 2009, the Ontario Superior Court (OSC) found section 96 of the *RCMP Act* Regulations infringed on section 2 (d) of the Charter, and that the infringement could not be justified under s.1. The judge dismissed the Associations' other claims against section 2(1) (d) of the PSLRA, and section 41 of the *RCMP Act* Regulations, which prohibits members of the RCMP from publicly criticizing the police force.

The Canada (Attorney General) applied to the Ontario Court of Appeal (OCA) to appeal the OSC decision regarding section 96. The two police associations cross-appealed their other two claims that had been denied by the OSC.

On June 1, 2012, the OCA overturned the OSC's decision. The OCA decision relied heavily on the April 2011 Supreme Court of Canada (SCC) *Fraser* decision. The decision noted the SCC's restrictive conclusion that "collective bargaining under section 2 (d) protects only the right to make collective representations and to have those collective representations considered in good faith."

Using the SCC ruling that collective bargaining is a "derivative right," the OCA concluded that "it is not effectively impossible for RCMP members to meaningfully exercise their fundamental freedom under section 2 (d) and act collectively to achieve workplace goals through the existence of the Staff Relations Representative (SRR) Program.

Union Legal Counsel — Both Associations are represented by Laura Young.

Interveners — Employer-side:
Attorney General of Ontario
Attorney General of Alberta
Attorney General of Saskatchewan
Attorney General of British Columbia

Union-side:
Canadian Labour Congress
Saskatchewan Federation of Labour
Public Service Alliance of Canada
Alberta Union of Provincial Employees and SAIT Academic Faculty Association
Association des membres de la police montée du Québec
Mounted Police Members' Legal Fund
Confédération des syndicats nationaux
Canadian Police Association
Canadian Civil Liberties Association
British Columbia Civil Liberties Association

ILO Complaint — No complaint has been filed.

Case # 19 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009)

Summary of the Legislation — The *Expenditure Restraint Act* (ERA), as part of the federal government's 2009 Budget Implementation Act, Bill C-10, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

Note — This case was one of seven cases against Bill C-10 before the Courts. There are five cases currently before lower courts (see Cases # 11, # 12 # 13, # 14 and # 15 above). There was a seventh challenge against Bill C-10 (see Case # 23 below).

Nature of Court Challenge — Violation of section 2 (d) of the Charter (denies collective bargaining and right to strike).

Initiator of the Challenge — Royal Canadian Mounted Police (Meredith and Roach).

Current Level of Court — The decision from the Supreme Court of Canada (SCC) was released on January 16, 2015. The SCC ruled against the RCMP and dismissed the appeal.

The SCC concluded that the ERA did not amount to a "substantial interference" in the associational activities of RCMP officers, "despite its constitutional deficiencies."

The SCC noted that the ERA resulted in a rollback of scheduled wage increases for RCMP members and eliminated other anticipated benefits. However, the Court found the process followed to impose the wage restraints did not disregard the substance of the usual procedure, and consultations on other compensation-related issues, either in the past or the future, were not precluded. The SCC concluded "the *ERA* and the government's course of conduct cannot be said to have substantially impaired the collective pursuit of the workplace goals of RCMP members." (para 30, 2015 SCC 2, Case number 35424)

The Court, however, further added their "conclusions, as they relate to the *ERA*'s impact on the Pay Council process, should not be taken to endorse the constitutional validity of that process or of similar schemes."

The SCC justices also noted the differences between the ERA and the BC *Health and Social Services Delivery Improvement Act,* 2002, which the Court found to be unconstitutional was instructive:

> The facts of *Health Services* should not be understood as a minimum threshold for finding a breach of s. 2 (*d*). Nonetheless, the comparison between the impugned legislation in that case and the *ERA* is instructive. The *Health and Social Services Delivery Improvement Act*, S.B.C. 2002, c. 2, Part 2, introduced radical changes to significant terms covered by collective agreements previously concluded. By contrast, the level at which the *ERA* capped wage increases for members of the RCMP was consistent with the going rate reached in agreements concluded with other bargaining agents inside and outside of the core public administration and so reflected an outcome consistent with actual bargaining processes. The process followed to impose the wage restraints thus did not disregard the substance of the former procedure. And the *ERA* did not preclude consultation on other compensation-related issues, either in the past or the future. (para 28, 2015 SCC 2, Case number 35424)

Previous Judgements on This Case — Members of the RCMP are represented by the Staff Relations Representative (SRR) Program, and the two plaintiffs were elected representatives on the SRR Program's National Executive. The SRR, in turn, has representation on a Pay Council, which is an advisory board that also includes management and a neutral chairperson. The Pay Council, through a process of collaboration and consensus, makes recommendations on pay and benefits to the employer.

In June 2008, the Treasury Board announced a pay package that resulted from the Pay Council's efforts. However, in December 2008, the Treasury Board reduced the pay increases without consulting the Pay Council. The Treasury Board considered itself bound by the ERA, which set aside "any collective agreement, arbitral award or terms and conditions of employment" . . . and established a schedule of reduced pay increases.

The RCMP challenged the federal government at the Federal Court. In its June 2011 decision, the Federal Court found certain provisions of the ERA interfered with the RCMP members' rights to make collective representations to their employer, the Treasury Board. The Court found that the Treasury Board's decision to cut the RCMP wage package was a unilateral decision: "Treasury Board withdrew the issue from consideration and refused to negotiate on a good faith basis." The Court also recognized that the impact of the ERA was not temporary — and that it "set the benchmark for future wage increase negotiations."

Finding that the Pay Council process was "completely disregard[ed]," the Court concluded that this "unilateral cancellation of a previous agreement also constitutes interference with section 2 (d) rights." The Court struck down the provisions of the ERA that rolled back wages and imposed wage increase limits for the RCMP.
The federal government appealed this decision to the Federal Court of Appeal (FCA). On April 26, 2013, the FCA overturned the June 2011 Federal Court decision.

The FCA held that the federal government's *Expenditure Restraint Act* did not violate the guarantee of freedom of association in section 2 (d) of the Charter. In the FCA's view, the government's action did not substantially interfere with the process of

collective bargaining, primarily because the RCMP's salary determination scheme (a Pay Council) was subject to unilateral control by the government, and did not amount to collective bargaining.

Union Legal Counsel — The RCMP are represented by Chris Rootham, a partner with Nelligan O'Brien Payne.

Interveners —	Employer-side:	Attorney General of Ontario
		Attorney General of Alberta
		Attorney General of Saskatchewan
		Attorney General of British Columbia
	Union-side:	Canadian Labour Congress
		Professional Institute of the Public Service of Canada
		Public Service Alliance of Canada
		Canadian Union of Public Employees, Local 675
		Confédération des syndicats nationaux and
		Union of Canadian Correctional Officers

CLOSED CASES: 2013–2016

Case # 20 The Federal *Act to Amend the Income Tax Act (labour organizations),* Bill C-377 (June 30, 2015)

Summary of the Legislation — Bill C-377 will force unions to provide an incredibly onerous level of detailed financial disclosure about their work on behalf of their members. It will require all unions and each of their locals to disclose detailed financial information, such as salaries, supplier contracts, loans, accounts receivables, investments, and spending on organizing, collective bargaining, education, lobbying and all political activities. All this information will be made public on a federal government website. Failure to comply would result in a $1,000/day fine for every day not in compliance.

Nature of the Court Challenge — Violation of section 2 (d), freedom of association; violation of section 2 (b), freedom of expression; violation of section 8, the guarantee of the right to privacy of the Charter. Bill C-377 also exceeds Parliament's legislative jurisdiction under section 92 (13) of the *Constitution Act, 1867,* in that the federal Parliament does not have the power to pass laws regulating labour relations which predominantly falls within provincial jurisdiction.

Initiators of the Challenge — Alberta Union of Public Employees (AUPE). Canada's Building Trades Unions (CBTU) are also reportedly about to file a similar application in Alberta Court of Queen's Bench.

The governments of Alberta and Manitoba are also considering filing a challenge under section 92 (13) of the *Constitution Act, 1867.* The Canadian Labour Congress is also on record that it will initiate a Charter challenge.

Current Level of Court — AUPE filed an application on July 14, 2015, in the Court of Queen's Bench of Alberta. On December 1, 2015, AUPE announced that it was adjourning its challenge against Bill C-377 as a result of the promise made by the new federal Liberal government to repeal the act. Also in December 2015, the new federal Liberal government took its first step towards repealing the controversial law by waiving the requirement that unions begin January 2016 publicly disclosing their expenditures to the Canada Revenue Agency.

Union Legal Counsel — AUPE is represented by Patrick Nugent with Nugent Law Office in Edmonton.

Interveners — No interveners at this stage.

ILO Complaint — No ILO complaint at this stage.

Case # 21 British Columbia — Mexican government's claim that it's sovereign immunity will be violated if the B.C. Labour Relations Board is allowed to rule on a UFCW allegation that Mexico and its consulate in Vancouver colluded with the operators of a B.C. agricultural operation to bust the union

Summary of the Legislation — A violation of section 6 (1) of the B.C. *Labour Relations Code* — Unfair Labour Practices: "Except as otherwise provided in section 8, an employer or a person acting on behalf of an employer must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it." And a violation of section 9 — Coercion and intimidation prohibited: "A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union."

Nature of the Court Challenge — Whether or not the Mexican government has sovereign immunity from prosecution under the B.C. *Labour Relations Code.*

Initiator of the Challenge — United Food & Commercial Workers Canada, Local 1518.

Current Level of Court — On January 30, 2015, the B.C. Court of Appeal upheld a January 2014 ruling by the B.C. Supreme Court to allow the BCLRB to rule on testimony from former Mexico consular officials, and on evidence in the form of leaked documents that overwhelmingly pointed to blacklisting. Ultimately, the BCLRB determined that Mexico had altered documents in an attempt to cover up its union-busting activities.

The Mexican government did not apply for leave to appeal to the Supreme Court of Canada.

Previous Judgements on This Case — The evidence was first presented in late 2012 to the BC Labour Relations Board (BCLRB) by UFCW Canada Local 1518. The BCLRB hearings were stopped in March 2013, awaiting the hearing of Mexico's petition. The petition argued that because Mexico has sovereign immunity, the BCLRB should not have been allowed to consider testimony from former consular officials, or to receive leaked consular documents and other Mexico files and documentary evidence that overwhelmingly pointed to blacklisting activity.

Because the petition was struck down, the case and all the evidence returned to the BCLRB. On March 21, 2014, the BCLRB ruled that Mexican government and consular officials blacklisted Mexican seasonal migrant workers who were suspected of being union sympathizers, preventing them from returning to Canada. The Board also found that Mexico had altered documents in an attempt to cover up its union-busting activities.

Union Legal Counsel — UFCW was represented by Chris Buchanan of Hastings Law Office.

Interveners — There were no interveners.

ILO Complaint — There was not an ILO complaint filed regarding this case.

Case # 22 Alberta *Public Sector Services Continuation Act* (Bill 45), *Public Service Employee Relations Act* and the *Labour Relations Code*

Summary of the Legislation — The *Public Sector Services Continuation Act* (Bill 45) places further restrictions on some 200,000 unionized public sector workers in Alberta, who already are denied their right to strike, and broadens the definition of a strike to include “any slowdown or any activity that has the effect of restricting or disrupting production or services." It introduces for the first time in Canada a vague legal concept of “strike threat,” which makes it illegal to canvass the opinion of “employees to determine whether they wish to strike,” or for an individual to freely express a view that calls for or supports strike action. Bill 45 also imposes huge punitive financial penalties on unions, their members, and even on citizens unrelated to the unions, who encourage or support an “illegal strike” or “strike threat.”

NOTE: On March 19, 2015 Alberta’s Premier Jim Prentice announced Bill 45 will be repealed.

The Alberta *Public Service Employee Relations Act* (PSERA) was passed in 2000 and governs the collective bargaining process for some 60,000 unionized provincial government employees in the province. Section 70 of the PSERA prohibits public employees (and their unions) from participating in a strike or causing a strike. If the bargaining process does not reach a negotiated settlement on terms and conditions of employment, the only dispute resolution mechanism available to unionized public sector employees is compulsory arbitration, as provided for in Part 6, Division 2 of the PSERA. The Alberta *Labour Relations Code* (LRC) was passed in 2000 and governs the collective bargaining process for the other 100,000 unionized public sector employees not covered by the PSERA. Division 16, Part 2 of the LRC prohibits all other health care workers not covered by the PSERA from participating in a strike or causing a strike. Section 97 of the LRC, like the PSERA, makes compulsory arbitration the only dispute resolution mechanism available to unionized public sector employees.

Nature of the Court Challenge — Violation of the following sections of the Charter: section 2(b) — freedom of expression; Section 2 (d) — freedom of association; Section 7 — the right to life, liberty and security of the person; Section 11 (d) — anyone accused of breaking the law is innocent until proven guilty; and Section 12 — everyone has the right not to be subjected to cruel and unusual punishment.

Initiators of the Challenge — the Alberta Union of Provincial Employees (AUPE), the United Nurses of Alberta (UNA) and the Health Sciences Association of Alberta (HSAA/NUPGE). **Note:** HSAA/NUPGE is only challenging Bill 45 at this point.

Current Level of Court — On April 2, 2015, the Alberta Court of Queen's Bench has ruled that Bills 45 and 46 violate the Charter of Rights and Freedoms and has gave the government one year to fix them. Justice D.R.G. Thomas ruled that Section 96 of the Labour Relations Code and Section 70 of the Public Service Employee Relations Act — both of which take away the right to strike for tens of thousands of public-sector workers — violate the Charter.

The government did not appeal the ruling.

Union Legal Counsel — HSAA is represented by Dan Scott with Seveny Scott Lawyers in Edmonton, AUPE is represented by Patrick Nugent with Nugent Law Office in Edmonton, and UNA is represented by Ritu Khullar with Chivers Carpenter in Edmonton.

Interveners — Employer-side: Alberta Health Services

Union-side: Alberta Federation of Labour

ILO Complaint — In March 2015, the ILO ruled on a complaint (Case No. 3057) filed by the National Union of Public and General Employees finding Bill 45 did not comply with ILO freedom of association principles.

Both the PSERA and the LRC also were subject to ILO complaints in the 1980s (Case No. 893, Case No. 1247, Case No. 1284) and in addition were the focus of a September 1985 ILO Study and Information Mission to Alberta, headed by Sir John Wood, CBE, LLM. The ILO Committee on Freedom of Association ruled in both complaints that the PSERA and the LRC did not comply with ILO freedom of association principles. The report from the ILO Study and Information Mission also came to the same conclusion. Successive governments in Alberta have failed to act on the recommendations of the ILO.

Case # 23 Federal *Expenditure Restraint Act*, Bill C-10 (March 2009)

Summary of the Legislation — This Act, as part of the federal government's 2009 *Budget Implementation Act*, imposed caps on salary increases for federal government employees, prohibited any additional compensation increases, such as allowance, bonus, differential or premium, and prohibited any changes to the classification system that resulted in increased pay rates. In several cases, the legislation overrides previously negotiated collective agreements containing wage increases above the imposed salary caps.

Nature of Court Challenge — Violation of section 2 (d) of the Charter (denies collective bargaining and right to strike).

Initiator of the Challenge — The Association of Justice Counsel.

Current Level of Court — On August 11, 2012, the Ontario Court of Appeal (OCA) overturned a November 2011 Ontario Superior Court (OSC) decision that ruled that the ERA infringes section 2 (d) because it "substantially limits, both in purpose and effect, the freedom of association guaranteed by the Charter." The Association sought leave to appeal to the Supreme Court of Canada, but the SCC denied leave to appeal on February 14, 2013.

Union Legal Counsel — The Association of Justice Counsel was represented by Andrew Loan with Paliare, Roland, Rosenberg & Rothstein.

Interveners — There were no interveners

ILO Complaint — There was not an ILO complaint filed regarding this case.

Case # 24 Québec — Challenge to the *Anti-Corruption Act*, Bill 15 (June 2011) — section 61, which amended section 85 of the *Act respecting labour relations, vocational training and manpower management in the construction industry*

***S*ummary of the Legislation —** This specific amendment forces employees of the Québec Construction Commission (CCQ) to disaffiliate from their current union, Local 573 of the Canadian Office and Professional Employees Union (COPE), and makes it illegal for them to affiliate with a union or union central whose members are construction workers (including the FTQ, CSN, CSD and CTC).

Nature of Court Challenge — COPE argued that the amendment noted above prevents members of COPE Local 573 from exercising their freedom of association rights under section 2 (d) of the Charter.

Initiator of the Challenge — The Canadian Office and Professional Employees Union (COPE) on behalf of COPE Local 573 members.

Current Level of Court — In a unanimous decision released in February 2014, the Quebec Court of Appeal found the section 61 of the *Anti-Corruption Act* to be an infringement of section 2 (d) the freedom of association. However the Court determined that it was justified in a free and democratic society under section 1 of the Charter. COPE decided against appealing to the Supreme Court of Canada.

Union legal counsel — COPE was represented by internal legal counsel, Pierre Gingras.

Interveners — There are no interveners.

ILO Complaint — A complaint (Case No. 3015) was filed by the Canadian Office and Professional Employees Union (COPE) on behalf of Local 573 in March 2013. The ILO Committee on Freedom of Association has not yet dealt with the compliant.

Case # 25 Federal — Challenge to an agreement between the Treasury Board and the Professional Institute of the Public Service Canada (PIPSC) which was made into an order by the Public Service Labour Relations Board (PSLRB)

Summary of the Legislation — This case did not involve a challenge to legislation. The specific challenge relates to an agreement made between Treasury Board and PIPSC regarding disclosure of personal contact information for all bargaining unit members for purposes of providing representation, holding strike votes and etc. That agreement had been made into an order by the PSLRB.

Nature of Court Challenge — Elizabeth Bernard, a Rand formula non-member of PIPSC, brought an application for judicial review to set aside the PSLRB order on the basis that it violated her rights under the *Privacy Act* and under section 2 (d) of the Charter.

Initiator of the Challenge — Elizabeth Bernard brought the challenge forward and is self-represented. The SCC has appointed an amicus curiae (an individual who is not a party or an attorney in the case, but who has knowledge of, or a perspective on, which makes her or his views valuable to the court).

Current Level of Court — On February 12, 2014, the Supreme Court of Canada released its decision and upheld a decision of the Federal Court of Appeal. The Court ruled that the disclosure of a federal public servant's personal contact information by the employer to the union that represented her was authorized by the federal *Privacy Act*. The Court held that there was a "sufficiently direct connection" between the employer's purpose in collecting the information and the union's intended use of the information that an employee could reasonably expect that the information would be used in the manner proposed.

Moreover, given unions' representational duties, the Court held that a union has a right to basic personal information about employees that is collected by the employer as part of the employment relationship, and that the disclosure of this information does not violate employees' section 2 (d) and section 8 Charter rights.

Union Legal Counsel — PIPSC was represented by Peter Engelmann of Goldblatt Partners. PSAC was an Intervener in the case and was represented by Andrew Raven, a partner with Raven, Cameron, Ballantyne and Yazbeck LLP.

Interveners — Union-side: Public Service Alliance of Canada

ILO Complaint — There was no ILO complaint filed regarding this case.

Case # 26 Alberta *Personal Information Protection Act* (PIPA) (May 2010)

Summary of the Legislation — Certain sections of the *Personal Information Protection Act* (PIPA) violate an individual's freedom of expression as defined by section 2 (b) of the Charter.

Nature of Court Challenge — Violation of section 2 (b) of the Charter (freedom of expression).

Initiator of the Challenge — United Food and Commercial Workers — Canada (UFCW Canada) Local 401.

Current Level of Court — The decision of the Alberta Court of Appeal was appealed by the Alberta Attorney General and the Alberta Information and Privacy Commissioner to the Supreme Court of Canada (SCC) and was heard on June 11, 2013. The SCC delivered its decision on November 15, 2013, in favour of the UFCW Canada. The following quote from the ruling sums up the SCC decision:

> PIPA imposes restrictions on a union's ability to communicate and persuade the public of its cause, impairing its ability to use one of its most effective bargaining strategies in the course of a lawful strike. In our view, this infringement of the right to freedom of expression is disproportionate to the government's objective of providing individuals with control over personal information that they expose by crossing a picket line.
>
> Accordingly, we would answer the constitutional questions as follows:
>
> 1. Do the Personal Information Protection Act, S.A. 2003, c. P-6.5, and the Personal Information Protection Act Regulation, Alta Reg. 366/2003, violate s. 2(b) of the Canadian Charter of Rights and Freedoms insofar as they restrict a union's ability to collect, use or disclose personal information during the course of a lawful strike?
>
> Yes.

The SCC declared PIPA to be invalid but suspended the declaration of invalidity for a period of 12 months to give the Alberta legislature time to decide how best to make the legislation constitutional. UFCW Canada was awarded costs throughout.

Union Legal Counsel — UFCW Canada Local 401 was represented by Gwen Gray and Vanessa Cosco of Chivers & Carpenter.

Interveners —	Employer-side:	Canada (Attorney General)
		Attorney General of Ontario
		Privacy Commissioner of Canada
		Canadian Civil Liberties Association
		British Columbia Civil Liberties Association
		Information and Privacy Commissioner of Ontario
		Coalition of British Columbia Businesses
		Merit Canada
		Information and Privacy Commissioner of BC
	Union-side:	Alberta Federation of Labour
		Canadian Civil Liberties Association
		British Columbia Civil Liberties Association

ILO Complaint — There was not an ILO complaint filed regarding this case.

Case # 27 Ontario *Labour Relations Act,* LRA, section 127.2 — "non-construction employer" provisions

Summary of the Legislation — Section 127.2 of the *Labour Relations Act*, 1995, permits an employer that does not sell construction services to third parties to bring an application to the Labour Relations Board for a "non-construction employer" declaration.

Nature of the Court Challenge — Violation of section 2 (d) of the Charter (denies collective bargaining and the right to strike).

Initiators of Challenge — Canadian Union of Skilled Workers (CUSW)

Current Level of Court — CUSW's application for leave to appeal to the Supreme Court of Canada was denied. On May 8, 2012, the Ontario Court of Appeal upheld the Divisional Court decision to overturn the Labour Relations Board decision that found section 127.2 of the *Labour Relations Act* violated section 2 (d) of the Charter as it substantially interfered with the process of collective bargaining.

Union Legal Counsel — CUSW was represent by Lorne A. Richmond with Sack Golblatt Mitchell LLP.

Interveners —	Employer-side:	Greater Essex County District School Board
	Union-side:	Provincial Building and Construction Trades Council of Ontario

ILO Complaint — There was not an ILO complaint filed regarding this case.

Case # 28 Québec *Labour Code,* Section 21 dealing with agricultural workers

Summary of the Legislation — Section 21 of the Québec *Labour Code* stipulates that agricultural workers are excluded from collective bargaining if they work on farms that have three employees or less working on a year-round basis.

Nature of Court Challenge — Violation of section 2 (d) of the Charter because it denies agricultural workers employed on farms that have three or less employees the right to join a union and bargain collectively. The Québec *Labour Code* also violates section 15 (1) in that section 21 of the *Code* was discriminatory towards farm workers, and particularly, migrant workers.

Initiator of the Challenge — United Food and Commercial Workers — Canada (UFCW Canada).

Current Level of Court — UFCW Canada launched a Charter challenge before the Québec Labour Commission where it was seeking certification of a bargaining unit constituted exclusively of migrant workers from Mexico. Relying on *B.C. Health* (and before *Fraser*), the Board found in April 2010, the provision was unconstitutional because it denies agricultural workers the guarantee of freedom of association. The Québec Attorney General and the farm lobby group FERME appealed this decision to the Québec Superior Court.

On March 11, 2013, the Québec Superior Court ruled that “in relationship to agricultural workers who work on farms which ordinarily and continuously employ less than three workers, Section 21 of the *Code* is discriminatory as being a significant hindrance on their ability to exercise their fundamental right of freedom of association.” The Court however disagreed with the union's section 15 (1) argument, ruling “any difference in treatment does not arise as a result of their status as migrant workers, but rather as a result of the nature of the industry in which they work.” The government of Québec announced in April 2013 that it will not appeal the Québec Superior Court decision.
Union Legal Counsel — UFCW Canada was represented by Pierre Grenier and Sibel Ataogul of Melançon, Marceau, Grenier & Sciortino.

Interveners — There were no interveners.

ILO Complaint — There was not an ILO complaint filed regarding this case.

Case # 29 New Brunswick — Random drug testing in the workplace

Summary of the Legislation — This Charter challenge does not pertain to a particular piece of labour legislation but a random drug testing policy instituted by Irving Oil in New Brunswick.

Nature of Court Challenge — A challenge to Irving Oil's random drug testing policy in violation of section 7 (right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice) and section 8 (the right to be secure against unreasonable search or seizure) of the Charter.

Initiator of the Challenge — The Communications, Energy and Paperworkers Union (CEP) Local 30.

Current Level of Court — On June 14, 2013, the Supreme Court of Canada released its decision in a case between Irving Pulp and Paper Limited and the Communication Energy and Paperworkers Union of Canada regarding Irving's unilateral introduction of random alcohol testing in the workplace. The Supreme Court upheld the arbitration board's decision that Irving had not presented sufficient evidence of a workplace alcohol problem to warrant random testing, despite that Irving operated a dangerous workplace.

Union Legal Counsel — CEP Local 30 was represented by Joël Michaud with Pink Larkin.

Interveners —	Employer-side:	Construction Owners Association of Alberta Construction Labour Relations Association Enform Canadian National Railway Company Canadian Pacific Railway Company Via Rail Canada Inc. Alliance of Manufacturers & Exporters of Canada Canadian Mining Association Mining Association of British Columbia Mining Association of Manitoba Inc. Québec Mining Association Ontario Mining Association Saskatchewan Mining Association
	Union-side:	Alberta Federation of Labour CEP Local 707 Canadian Civil Liberties Association Power Workers' Union

ILO Complaint — There was not an ILO complaint filed regarding this case.

Case # 30 Québec's A*ct Respecting Conditions of Employment in the Public Sector*, Bill 142 (December 2005)

Summary of the Legislation — The *Act Respecting Conditions of Employment in the Public Sector* was passed abruptly in December 2005 by the Québec Liberal government after several months of bargaining with unions representing public sector workers in the province. The Act imposed six-year collective agreements on about 500,000 public sector workers in the province, including predetermined salary increases within a strict budget framework that had been imposed since negotiations had begun. Non-monetary conditions were also imposed on a group of unions that had not achieved agreement on these terms within a strict deadline also imposed by the government.

Nature of the Court Challenges — Several public sector unions and labour centrals brought motions before the Québec Labour Relations Commission alleging the government's failure to bargain in good faith. A constitutional challenge was also brought before the Superior Court alleging Bill 142 violated the freedom of association and the freedom of expression.

In a January 2012 decision, the Labour Commission allowed the complaints for bad faith bargaining on the basis that the government had refused throughout negotiations to touch its strict monetary framework, in addition to insisting that statutory pay equity adjustments be negotiated alongside salary increases. The Attorney General moved for judicial review of this decision.

Initiators of Challenges — Almost all Québec public sector unions representing government, education and healthcare staff, including the three labour centrals: Centrale des syndicats du Québec (CSQ), Confédération des syndicats nationaux (CSN) and Fédération des travailleurs et travailleuses du Québec (FTQ).

Current Level of Court — On January 10, 2013, the Superior Court of Québec rendered two decisions: one denying the unions' constitutional challenge, and the other allowing the Attorney General's judicial review of the Commission's decision. None of the unions involved in the case sought leave to appeal at the Supreme Court of Canada.

Union Legal Counsel — Each union that was a part of the challenge had its own legal counsel. The lead counsel included Claudine Morin (CSQ), Guy Martin (CSN) and Louis Ménard (FTQ).

Interveners — There were no interveners.

ILO Complaint — A complaint (Case No. 2467) was filed by the Association des substituts du procureur général du Québec in January 2006. The ILO Committee on Freedom of Association ruled in March 2007 that Bill 142 violated the ILO's freedom of association principles.