

RCMP Employees Now Have Right to Organize

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In a landmark decision issued in January, the Supreme Court of Canada has confirmed the right of employees of the Royal Canadian Mounted Police ("RCMP") to organize.

The RCMP had previously not been allowed to unionize. Rather, labour relations were dealt with by a Staff Relations Representation Program. The Program provided for consultation between members' representatives and management regarding labour relations issues but management retained the ultimate authority to make all decisions in connection with the workplace.

In its reasons, the Supreme Court held that the legislation imposing the Program on RCMP employees violated the employees' right to freedom of association; a right which is guaranteed under the *Charter of Rights and Freedoms*. In reaching this decision, the Supreme Court has further developed the right to freedom of association guaranteed under the *Charter*.

Historically, collective bargaining was not recognized as a right protected by the *Charter*. That changed in 2007 when for the first time the Supreme Court elaborated on the extent to which collective bargaining is protected under the right to freedom of association.

The Supreme Court pointed out that it was not mandating any particular form of collective bargaining but that any form of collective bargaining must involve a "meaningful process" to pursue workplace goals. To be "meaningful," collective bargaining must provide employees with a degree of choice and independence "sufficient to enable them to determine their collective interests and meaningfully pursue them."

Giving employees "a degree a choice" includes:

- i. giving employees an opportunity to have effective input into the selection of their collective goals;
- ii. the ability to form and join new associations, change representatives, set and change collective workplace goals and dissolve existing associations; and

iii. accountability to members of the association.

Finally, the Supreme Court held that associations must be independent of management.

Since the Program was imposed by statute and RCMP members neither selected the program nor controlled the representatives, the Supreme Court held that the program was not consistent with the guaranteed right of freedom of association.

The declaration of invalidity does not take effect for one year to give the government time to pass new legislation. We suspect that it will not be long thereafter that unions attempt to organize the employees of the RCMP.