21230

Court No. 21230

SUPREME COURT OF CANADA

(On Appeal from the Court of Appeal for the Northwest Terrirotıes)

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SIGNIFICATION

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

APPELLANT

\- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

RESPONDENT

\- and -

THE NORTHWEST TERRITORIES PUBLIC SERIVCE ASSOCIATION

RESPONDENT

\- and -

THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF ONTARIO

INTERVENERS

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FILED
SUPREME COURT OF CANADA
DEC 4 1989
COUR SUPREME DU CANADA
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PART I - THE FACTS

Introduction

1. The Appellant is a federally incorporated non-profit corporation which is the certified bargaining agent for various groups of professionals employed by the federal government.

2. An application was brought by the Appellant for a declaration that Section 42(1) of the Public Service Act, R.S.N.W.T. 1974, c. P-13, as amended, ("the PSA") is inconsistent with the Canadian Charter of Rights and Freedoms and of no force and effect.

3. Section 42(1) of the PSA provides:

"In Sections 42 to 46

(a) "collective agreement" means an agreement in writing entered into pursuant to this section between the Commissioner and an employees' association respecting the terms and conditions of employment and related matters and shall be deemed to include any award made by an arbitrator;

(b) "employees' association" means an association of public service employees incorporated by an Ordinance [Act] empowering it to bargain collectively."

4. Section 42(1) when read in conjunction with Section 43 of the Act grants the right to collective bargaining to employees of the territorial government.

5. Section 43 of the PSA provides:

"43(1) The Minister or an employees' association on behalf of its members may, by written notice, require the other party to commence bargaining collectively with a view to the conclusion, renewal or revision of a collective agreement.

(2) Where notice to bargain collectively has been given, the employees' association and the officers designated to represent the Minister shall, without delay but in any case within sixty days after notice

has been given or within such further time as the parties may agree, meet and commence to bargain collectively in good faith."

Legislative History

6. Prior to the enactment of the PSA there was no legislation governing labour relations for employees of the territorial government. They fell outside of both the Public Service Staff Relations Act, S.C. 1966-67, c. 72 and the Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152, ss. 54, 55.

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7. The enactment of labour relations legislation by the Territorial Council (subsequently called the Legislative Assembly) came in response to representations made by the Public Service Alliance of Canada ("the PSAC") after a large number of its members were transferred from the federal public service to the employ of the Government of the Northwest Territories ("GNWT").

Case on Appeal, pp. 33-34, pp. 38-54, 63

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Factual Background to the Application

8. The goal of the PSAC in its dealings with the Government of the Northwest Territories in 1967 to 1969 was to obtain rights to bargain on behalf of GNWT employees. PSAC already represented employees of the federal government who worked in the Northwest Territories under federal collective bargaining legislation through the Northwest Territories Teachers' Association and other components of the PSAC.

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Case on Appeal, p. 34

9. Once the PSA was enacted by 1969 (2d), c. 25, the Territorial Council then passed the Teachers' Association Ordinance, R.O.N.W.T. Ch. T-2, which created an "employees' association" for teachers employed by the GNWT.

10. In October 1969, the Territorial Council also passed the <u>Northwest Territories Public Service Association Ordinance</u>, 1969 (3rd), c. 7 [R.S.N.W.T. 1970, c. N-2] ("the NWTPSA" Act"). The <u>NWTPSA Act</u> created an "employees' association" called the Northwest Territories Public Service Association ("the NWTPSA") which contained provisions similar to those found in union constitutions.

Case on Appeal, pp. 56, 88-91

The <u>NWTPSA Act</u>, <u>supra</u>

10 11. This new creation of the territorial government then became a component of the PSAC.

Case on Appeal, pp. 69-70

12. Since 1969 no other "employee associations" have been incorporated by the GNWT. The NWTPSA remains the only organization that may exercise the right to bargain collectively on behalf of non-teachers employed by the GNWT.

<u>NWTPSA Act</u>, <u>supra</u>, s. 3, 6(e), 7(e)

20 13. There is no provision in the <u>PSA</u> for the dissolution of an employees' association once it has been formed. Neither is there a procedure whereby a new employees' association can be created as of right if it meets certain criteria. The Director of Personnel for the GNWT has internal guidelines dealing with requests for the introduction of legislation incorporating an employees' association; but there is complete discretion on the part of a Minister whether to introduce such legislation.

Case on Appeal, pp. 94, 99

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14. In 1982, the Appellant asked the GNWT for the right to represent the government's professional employees who were represented by the component of the PSAC. The Commissioner replied:

> "This is to advise you that we will not entertain your application for certification or proceed with legislation to have you represent our professional workers. Should the nurses or other professional

> employees in our employ indicate a strong wish to be represented by P.I.P.S. <u>and if the P.S.A. [PSAC] agreed</u>, we would consider a review of our position." (emphasis added)
>
> Exhibit "B" to the Affidavit of Herbert James Hunt dated April 30th, 1987. Affidavit p. 93 *et seq*. Case on Appeal

15. In 1986, a number of nurses employed by the federal government who were members of the Appellant and represented by it for the purposes of collective bargaining were transferred to the employ of the Government of the Northwest Territories.

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> Case on Appeal, p. 28

16. The Government of the Northwest Territories refused to recognize the Appellant as the bargaining agent or representative of the transferred employees and refused to pass legislation that would allow the Appellant to be an "employees' association" within the meaning of Section 42 of the *PSA*. In response to the Appellant's request that it be granted the right to seek to represent professionals employed in the Northwest Territories public service, the Northwest Territories Government Leader stated:

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> "While I appreciate that professional employees may have somewhat different priorities than other public servants, <u>it is my view that these needs are being met through the associations certified through the existing legislation enacted by my Government</u>." (emphasis added)
>
> Exhibit "C" to the Affidavit of Herbert James Hunt dated April 30th, 1987. Affidavit p. 93 *et seq*. Case on Appeal

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17. When the Appellant's members were transferred to the territorial public service, those employees had no choice but to be represented by the Northwest Territories Public Service Association for the purposes of collective bargaining.

18. The Appellant therefore commenced an application challenging the constitutionality of Section 42(1) of the *PSA*.

Judicial Determination of the Application

19. By Order dated September 18th, 1987, Section 42(1) of the PSA was declared to be inconsistent with the Canadian Charter of Rights and Freedoms and of no force or effect.

Case on Appeal, pp. 11-12

20. In his Reasons for Judgment, Marshall J. held that the effect of Section 42 of the PSA was to require a union in the position of the Appellant to obtain a "statutory charter" as a precondition to seeking the right to bargain collectively.

Case on Appeal, p. 125

21. He held that Section 42 of the PSA offended the Charter because it affected the freedom of an association to exist and be recognized as an association.

Case on Appeal, p. 130

22. In his Reasons, Marshall J. identified three stages in the development of associations: first, individuals associate; second, an association comes into being and acquires status as an association whether by incorporation or some other means; and third, the association having been created then takes action to achieve the collective aims of its members. Marshall J. held that Section 42 of the PSA did more than affect the activities of an association. It reached back and affected the ability of a group to become established and acquire status as an association.

Case on Appeal, p. 130

23. He held that while the Charter guarantee of freedom of association does not protect the activities of associations, it does protect the right to join with others in lawful, common pursuits and to establish and maintain organizations and associations.

Case on Appeal, pp. 130-131

24. He held further that the impugned sections of the PSA requiring prior legislative approval of an employee association were anomalous in Canadian labour legislation and did not constitute a demonstrably justifiable limitation within the meaning of Section 1 of the Charter.

Case on Appeal, pp. 132-133

25. On appeal, this Judgment was overturned by the Court of Appeal for the Northwest Territories.

Case on Appeal, pp. 152B and 152C

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26. The Court of Appeal held that although the prospect of striking down the legislation "loomed" because of the requirement that the Legislative Council "incorporate" an employees' association, the Court could avoid doing so by interpreting the word "incorporated" in Section 42(1)(b) to include the words "or recognized" after the word "incorporated".

Case on Appeal, p. 151

20 27. The Court found that the legislative scheme did not contravene Section 2(d) of the Charter. The Court adopted the approach of LeDain J. in Reference re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313 (the "Alberta Reference") at p. 391 in deciding whether "particular activity of an association in pursuit of its objects is to be constitutionally protected or left to be regulated by legislative policy". After reviewing LeDain, J.'s conclusion that the activity of an association should not be constitutionally protected unless the goal pursued involved
30 fundamental rights or freedoms, the Court of Appeal concluded that "the right to certification is another example of particular activity in pursuit of the goal of collective bargaining that is a mere creation of statute" rather than a fundamental right or freedom.

Case on Appeal, pp. 146-149

PART II - POINTS IN ISSUE

28. Does Section 42(1) of the Public Service Act, R.S.N.W.T. 1974, c. P-13, as amended, infringe the freedom of association guaranteed by paragraph 2(d) of the Canadian Charter of Rights and Freedoms?

29. If the answer to question 29 is in the affirmative, can s. 42(1) of the Public Service Act, R.S.N.W.T. 1974, c. P-13, as amended, be justified under s. 1 of the Canadian Charter of Rights and Freedoms?

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PART III - THE ARGUMENT

A. Does s.42(1) of the PSA Infringe Freedom of Association?

30. It is submitted that Section 42(1) of the Public Service Act, R.S.N.W.T. 1974, c. P-13, as amended, infringes the freedom of association guaranteed by paragraph 2(d) of the Canadian Charter of Rights and Freedoms.

31. The section infringes the freedom of association in 10 two ways:

1. It requires that the Government of the Northwest Territories "incorporate" an association of public service employees before the association is permitted to seek the right to represent GNWT employees.
2. It creates a statutory monopoly whereby only the association chosen by the legislature is permitted to exercise the right to collective bargaining which has been granted to territorial government employees. 20

1. Requirement that an Employees' Association be "Incorporated"

32. It is submitted that Section 42(1) of the PSA requires that the Legislative Assembly of the Northwest Territories incorporate, in the sense of create or make into a body, an "employees' association" before it can be empowered to bargain collectively concerning terms and conditions of employment.

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33. It is submitted that the Northwest Territories Court of Appeal erred when it "interpreted" the impugned section to include the words "or recognized" after the word "incorporated".

34. In interpreting a statute, a Court must give an interpretation that the words of the statute can reasonably bear. As the Court of Appeal acknowledged, "recognize" is not a meaning that the word "incorporate" can reasonably bear.

35. The role of the Court is not to fill legislative gaps. It is beyond the power of the Court to amend the Act.

Hunter et al v. Southam Inc. (1984), 11 D.L.R.(4th) 641 (S.C.C.)

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36. Even if in certain cases a Court were permitted to use this "controversial interpretative technique", the circumstances for doing so did not exist in this case for the following reasons:

(a) contrary to the finding of the Court of Appeal, there is no evidence as to there having been a legislative oversight in 1969 in the choice of the word "incorporate";

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(b) contrary to the finding of the Court of Appeal there is no evidence that the change is one which the legislature would have made had it addressed the issue. The contemporaneous documents show that both the Council, the PSAC and the NWTPSA interpreted the word "incorporated" to mean "create" or "bring into existence";

Case on Appeal, pp. 56, 60, 69-70, 88-91

(c) contrary to the finding of the Court of Appeal, harm is done by the proposed change to legal rights created by the legislation. If Section 42(1) were struck down new legislation would have to be introduced by the Legislative Assembly. This would provide a forum in which legislative options more favourable to the Appellant and its members could be debated. By making what should be a legislative amendment in the Courts, the Court of Appeal has

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deprived the Appellant of that opportunity.

Case on Appeal, p. 90

37. If the Court of Appeal did err when it included the words "or recognized" and the word incorporate is given its plain meaning, s.42(1) of the PSA infringes the guarantee of freedom of association. This was acknowledged by the Court of Appeal.

Case on Appeal, pp. 151, 152

10 38. By requiring the legislature to create the employees' association the section interferes with the formation of an association in what the Supreme Court of the Northwest Territories referred to as the second stage of the evolution of an association: "the coming into being of the association or alliance, the status of corporation or the establishment of status".

Case on Appeal, p. 130

39. Freedom of association has been interpreted by this
20 Honourable Court in the Alberta Reference, supra, at p. 391, to include:

> "...the freedom to work for the establishment of an association...".

40 This interpretation was specifically adopted by three of the six Justices who decided the case. Since the three remaining Justices went beyond that narrow definition, freedom of association includes that right at a minimum. As one commentator has stated in analyzing the Reasons for
30 Judgment in the Alberta Reference:

> Freedom of association, on everyone's definition, included the constitutive right to bring a group or an associational formally into legal existence.

> "Striking Back: Fighting Words, Social Protest and Political Participation in Free and Democratic Societies" by David Beatty and Steven Kennett The Canadian Bar Review Vol. 67, December 1988, No. 4, p. 585

41. The requirement that the legislature incorporate an employees' association infringes the rights of individuals to "work for the establishment of an association" or to bring a group or an association formally into legal existence.

2. The Creation of a Statutory Monopoly in Collective Bargaining

42. It is submitted that even if the Northwest Territories Court of Appeal was correct in adding the words "or recognized" after the word "incorporated" or even if this Honourable Court were to find that the requirement that the legislature "incorporate" an employees' association was not an infringement of the Charter, the impugned section is nonetheless contrary to the guarantee of freedom of association.

43. By enacting Section 42(1) and Section 43 of the PSA, the legislature has granted the right to collective bargaining to its employees but it has reserved to itself the right to determine which association will exercise that right. The absence of any provision whereby employees may as of right in certain circumstances change their representatives for the purposes of collective bargaining also strikes at the root of the guarantee contained in Section 2(d) of the Charter.

44. This assertion that the creation of a statutory monopoly in collective bargaining infringes the guarantee of freedom of association is consistent with the interpretation given to freedom of association in the Alberta Reference. The common thread that runs through the four Reasons for Judgment of this Honourable Court was summarized by the Ontario Court of Appeal:

> "[In the Alberta Reference], although differing conclusions were reached as to whether the activities of an association, in that case a trade

> union's right to strike, are included or protected by s. 2(d), all of the judgments appear to recognize the notion that the freedom of association entrenched by the Charter is a freedom intended to allow individuals to engage in activities together and to pursue commonly held goals which cannot be achieved in isolation. Freedom of association is seen as a right which inheres in the individual, but which can only be exercised jointly by a plurality of individuals carrying out associational activities in common cause for a common purpose."
>
> Lavigne v. O.P.S.E.U. (1989), 67 O.R.(2d) 536, 559 - 560 (Ont. C.A.)

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45. The creation of a statutory monopoly in collective bargaining of the type created in the impugned legislation impacts negatively upon individuals "engag[ing] in activities together and pursuing commonly held goals which cannot be achieved in isolation". It does so by permitting only one association to pursue the goal (collective bargaining), designating which association that shall be and ensuring that there can be no change in the association unless the government (the employer) decides to enact legislation effecting such a change. There can be no more fundamental interference with an individual's freedom of association.

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46. Kerans J.A., speaking for the Court of Appeal of the Northwest Territories expressed his views on the Appellants' argument that the statutory recognition scheme infringed Section 2(d) of the Charter in the following terms:

> "The claim of the Institute, then, comes to this: freedom of association includes the freedom to get a licence to do something. The Institute qualified that by saying that it claims only a right to a fair process.
>
> The leading case on the scope of s. 2(d) is, of course, Reference Re Compulsory Arbitration (1987), 38 D.L.R.(4th) 161. The Supreme Court of Canada there overruled the Alberta Court of Appeal, which had said that the distinction between organizational and other activity is fragile and not a satisfactory way to deliniate the right. I was a member of the overruled court, but must apply the settled rule. Chief Justice Dickson, Wilson, J. concurring, agreed

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with the Alberta view. Four judges...did not. LeDain, J. at p. 239 expressed the issue as whether "...particular activity of an association in pursuit of its objects is to be constitutionally protected or left to be regulated by legislative policy". He decided, three others concurring, that unless the goal pursued itself involved fundamental rights or freedoms, it was not protected directly by freedom of association. He concluded,

> ...The rights for which constitutional protection is sought - the modern rights to bargain collectively and to strike... - are not fundamental rights or freedoms. They are the creation of legislation...

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It seems to me that it must follow that the right to certification is another example of particular activity in pursuit of the goal of collective bargaining that is a mere creation of statute.

The seeking of a licence is not an organizational activity; rather, it is common pursuit of a goal. It is said for the Institute that the freedom protects preparatory activity. This is correct if preparation is understood in an organizational sense; it seems not to be correct if the "preparation" is activity in pursuit of goal that is a first step to yet another goal."

20 Case on Appeal, pp. 146-147

47. It is respectfully submitted that this application of the <u>ratio</u> of LeDain, J. in the <u>Alberta Reference</u> is based on a fundamental misconception of the nature of a trade union, which is the form of association under consideration.

48. The very definition of a trade union includes the purpose with which it is submitted the impugned legislation has interfered. A trade union is not merely an association of
30 employees. An association of employees might include a social club made up of employees who worked for a particular employer, a benevolent society in which employee had banded together for mutual economic support or an association devoted to the improvement of laws affecting workers. A trade union

is an organization of employees "the purposes of which include the regulation of relations between employers and employees".

Canada Labour Code, R.S.C. 1985, c. L-1, s. 2
Public Service Staff Relations Act, R.S.C. 1985, c. P-35, s. 2 "employee organization"
The Ontario Labour Relations Act, R.S.O. 1980, c. 228, s. 1(1)(p)
Industrial Relations Act, R.S.B.C. 1979, c. 12, s. 1(1)
Labour Relations Code, R.S.A. 1988, c. L-1.2, s. 1(x)
Industrial Relations Act, R.S.N.B. 1973, c. I-4, s. 1
Labour Relations Act, R.S.M. 1987, c. L10

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49. Any legisl..tive scheme which deprives a trade union of the right to seek to represent its members in the regulation of relations between the employees who make up the association and their employer deprives the employees of the right to create a trade union. Without the possibility of being able to "regulate relations between employers and employees", there is no trade union.

50. If the Reasons for Judgment of LeDain J. correctly

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interpret Section 2(d) of the Charter, freedom of association does not protect the right to collective bargaining. However, whether or not collective bargaining is given Charter protection, once a legislative body grants the right to collective bargaining it cannot retain to itself the right to determine which group shall exercise that right without infringing upon the freedom of association of the individuals affected.

"Striking Back: Fighting Words, Social Protest and Political Participation in Free and Democratic Societies" supra

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Public Service Alliance of Canada v. Canada, [1987] 1 S.C.R. 424, McIntyre, J. at 453

51. If a legislative body does so, there is no freedom to associate as a trade union. The legislature is telling an employee that if she wishes to be part of an association "the purpose of which is the regulation of relations" between the employee and her employer, then she must associate with other

in a trade union of the government's choice. For all practical purposes, the result it not appreciably different from outlawing all but one trade union in a particular jurisdiction.

52. It is submitted that the interpretation urged by the Appellant, i.e., that the impugned legislation infringes the guarantee of freedom of association, is supported not only by this Court's jurisprudence to date but also by three additional sources which are available to this Court as aids
10 to interpretation: American jurisprudence; Canada's obligations under International Law; and Debates leading to the enactment of the Charter.

53. The U.S. Courts have held that the First Amendment includes "the right to organize and to select representatives for collective bargaining".

> United Federation of Postal Clerks v. Blount (1971), 325 F Supp. 879 at p. 883 (D.C.D.C.) affd. 404 U.S. 802 quoted in Alberta Reference, supra, p. 346 per Dickson, C.J.C.

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54. International law clearly supports an interpretation of freedom of association that would prohibit the government from dictating which bargaining agent will represent an employee.

55. Of particular relevance is the Convention Concerning Freedom of Association and Protection of the Right to Organize (No. 87) established by the International Labour Organization (ILO). The Convention was ratified by Canada in 1972.

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> ILO Convention No. 87 reproduced in Alberta Reference, supra, pp. 352-354

56. Complaints of violation of the Convention are dealt with in the first instance by a tripartite Committee on Freedom of Association established by the Governing Body of the ILO. The Committee decisions "comprise the cornerstone of

the international law on trade union freedom and collective bargaining".

> Alberta Reference, supra, p. 355, per Dickson C.J.C. citing Forde, The European Convention on Human Rights and Labour Law, 31 Am. J. Comp. L. 301 (1983), at p. 302

57. The ILO Committee on Freedom of Association has held that it is a denial of the guarantee of freedom of association to establish a trade union monopoly by legislation.

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> Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 3rd Ed., 1985 Geneva, pp. 47-48

58. The Committee has also held that it is an unjustified restraint on freedom of association for legislation to provide that the right of association is subject to discretionary prior authorization by a government department.

> Digest of decisions and principles, supra, at p. 56

59. Freedom of association was viewed by the drafters of

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the Charter to include, without the need for further elaboration, the freedom to organize and bargain collectively. Thus, s.2(d) was intended to protect against government interference of the sort that is inherent in s.42(1) of the PSA. The proceedings of the Special Joint Committee on the Constitution are admissible as extrinsic aids to the interpretation of the Charter.

> Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, Issue 43, Thursday, January 22nd, 1981, p. 69-70

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> Ref. re s.94(2) of the Motor Vehicle Act (1985), 24 D.L.R. (4th) 536 at 550-555 (S.C.C.)

B. Is Section 42(1) of the PSA a Reasonable Limitation?

60. It is submitted that Section 42(1) of the Public Service Act, R.S.N.W.T. 1974, c. P-13 as amended cannot be justified under Section 1 of the Canadian Charter of Rights and Freedoms.

61. In the Alberta Reference, supra, at pp. 373-374 the Court summarized the test to be applied in considering whether legislation can be saved by Section 1:

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> "First, the legislative objective, in pursuit of which the measures in question are implemented, must be sufficiently significant to warrant overriding a constitutionally guaranteed right: it must be related to social "concerns which are pressing and substantial in a free and democratic society". Second, the means chosen to advance such an objective must be reasonable and demonstrably justified in a free and democratic society. This requirement of proportionality of means to ends normally has three aspects: a) there must be a rational connection between the measures and the objectives they are to serve; b) the measures should impair as little as possible the right or freedom in question; and c) the deleterious effects of the measures must be justifiable in light of the objective which they are to serve."

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62. The Courts below have considered the impugned legislation in the light of Section 1 and have found that it cannot meet the test.

63. In the Reasons for Judgment of the Supreme Court of the Northwest Territories, Marshall, J. stated:

> "Here, I am satisfied that the impugned section cannot be saved by s.1 of the Charter as a demonstrably justifiable limitation on freedom of association. The requirement of prior legislative approval is anomalous in Canadian labour legislation. There is no evidence that the government's objective of orderly and representative collective bargaining could not be achieved by a system of independent certification based on objective criteria, as has been established in other jurisdictions."

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Case on Appeal, p. 133

64. In the Reasons for Judgment of the Northwest Territories Court of Appeal, Kerans, J.A. when referring to the requirement that the proposed bargaining agent be incorporated by the legislature said:

> "Moreover, the limit is acknowledged to be unnecessary and capricious and the result of legislative oversight, so that it could not be sustained on invocation of s.1."
>
> Case on Appeal, p. 151

65. There is no evidence of any legislative objective which required this statutory monopoly in collective bargaining, let alone an objective that is "sufficiently significant to warrant overriding a constitutionally guaranteed right". The section was passed as a result of one trade union lobbying for a means to represent its members. There is no evidence of any legislative objective that led the Council to choose this rather than some other form of recognition or certification procedure.

66. In the affidavit material filed on the application, an official of the Department of Personnel of the GNWT gave his opinion, without any supporting evidence, that "there would be considerable cost incurred by the government in setting up and administering the collective bargaining process for another association of public service employees." He also expressed his personal opinion that:

> "The addition of another association in a small community could lead to disharmony. The negotiation of different benefits for different associations could cause resentment amongst individuals in those communities."
>
> Case on Appeal, p. 97

67. It is submitted that this type of justification falls far short of the onus placed on the Respondent, the Commissioner of the Northwest Territories. The jurisdiction which is most similar to the Northwest Territories, The Yukon Territory, has independent certification procedures which are

similar to those of the Public Service Staff Relations Board rather than a statutory monopoly. Prior to 1967, employees in the communities in the Northwest Territories belonged to different bargaining units with different collective agreements and no evidence was adduced of that having caused any disharmony.

Public Service Staff Relations Ordinance, R.S.Y.T. 1978, c. P-11

Public Service Staff Relations Act, supra, s. 26

10 68. The "statutory recognition" scheme contained in the PSA is indeed anomalous. Shirley Goldenberg, a leading expert in public service labour law summarized the situation in Canada in her article "Public Sector Relations in Canada". In it she noted that in the Federal and four provincial jurisdictions "government employees...[have] the right to associate in unions of their choice, subject to regular certification procedures" (emphasis added). Ms. Goldenberg also pointed out that in Quebec, the legislature while "designating an existing association as bargaining 20 agent for clerical and blue-collar employees...left others, notably the professionals, relatively free to organize in unions of their choice". Even those provinces which have given statutory recognition to the associations with whom they had "informal consultative relationships" prior to the introduction of collective bargaining, have with the exception of Nova Scotia, amended their legislation to permit another bargaining agent to replace the association originally recognized should the association cease to represent the majority of employees in the bargaining unit.

30 Goldenberg, "Public Sector Relations in Canada", Public Sector Bargaining, Washington, 1979, pp. 270-273

PART IV - ORDER REQUESTED

69. The Appellant requests that this appeal be allowed with costs and that the constitutional questions be answered as follows:

Question 1 - Yes

Question 2 - No

10 All of which is respectfully submitted.

Catherine H. MacLean
Counsel for the Appellant

(CHM-ANN79)

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LIST OF AUTHORITIES

1. Hunter et al v. Southam Inc. (1984), 11 D.L.R. (4th) 641 (S.C.C.)

2. Lavigne and OPSEU (1989), 67 O.R. (2d) 536 (Ont. C.A.)

3. Public Service Alliance of Canada v. Canada, [1987] 1 S.C.R. 424

4. Reference re: Public Service Employee Relations Act (Alberta), [1987] 1 S.C.R. 313

5. Reference re: s.94(2) of the Motor Vehicle Act, 24 D.L.R. (4th) 536 (S.C.C.)

6. United Federation of Postal Clerks v. Blount (1971), 325 F.Supp. 879 (D.C.D.C.)

7. Canada Labour Code, R.S.C. 1985, c. L-1

8. Industrial Relations Act, R.S.B.C. 1979, c. 212

9. Industrial Relations Act, R.S.N.B. 1973, c. I-4

10. Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152

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