19234

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

IN THE MATTER OF A REFERENCE UNDER SECTION 27(1) OF THE JUDICATURE ACT, BEING CHAPTER J-1 OF THE REVISED STATUTES OF ALBERTA, 1980;

AND IN THE MATTER OF THE VALIDITY OF COMPULSORY ARBITRATION PROVISIONS FOUND IN THE PUBLIC SERVICE EMPLOYEE RELATIONS ACT, THE LABOUR RELATIONS ACT, AND THE POLICE OFFICERS COLLECTIVE BARGAINING ACT, BEING CHAPTERS P-33, L-1.1. AND P-12.05 OF THE REVISED STATUTES OF ALBERTA, 1980 RESPECTIVELY;

AND IN THE MATTER OF THE EXCLUSION OF CERTAIN EMPLOYES FROM UNITS FOR COLLECTIVE BARGAINING.

BETWEEN:

THE ALBERTA UNION OF PROVINCIAL EMPLOYEES,
THE ALBERTA INTERNATIONAL FIRE FIGHTERS ASSOCIATION,
and THE CANADIAN UNION OF PUBLIC EMPLOYEES,

Appellants

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY THE ATTORNEY GENERAL OF ALBERTA,

Respondent

FACTUM OF THE RESPONDENT

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PART I

RESPONDENT'S POSITION REGARDING APPELLANTS' STATEMENT OF FACTS

1. The Respondent is content with the Statement of Facts contained in the Factums filed by tne Respondents.

PART II

RESPONDENT'S POSITION REGARDING POINTS IN ISSUE

2. The Respondent's position is that all of the constitutional questions stated by the Chief Justice in this Appeal should be answered in the negative.

PART III - ARGUMENT

1. THE SCOPE OF FREEDOM OF ASSOCIATION

ABSOLUTE INTERPRETATION VERSUS PURPOSIVE INTERPRETATION

3. It is submitted that the theory by which the scope of Charter rights and freedoms is considered 'absolute' in the first instance is incompatible with the purposive approach to Charter interpretation and that the interpretive principle adopted and applied by the Alberta Court of Appeal is a useful formulation of the purposive approach.

4. The purpose of the Charter is:

> . . . to guarantee and to protect within the limits of reason, the enjoyment of the rights and freedoms it enshrines. It is intended to constrain governmental action inconsistent with those rights and freedoms. . .
>
> Hunter v. Southam (1985) 11 D.L.R. (4th) 641 at 650 (S.C.C.)

5. In order that this purpose be achieved, in developing the principles for the judicial interpretation and application of the Charter, the Courts must strive for principles that permit a high degree of precision.

6. This has been observed in the context of Section 1 of the Charter:

> The question of the standards which the Court should use in applying Section 1 is, without a doubt, a question of enormous significance for the operation of the Charter. If too low a threshold is set, the Courts run the risk of emasculating the Charter. If too high a threshold is set, the Courts run the risk of unjustifiably restricting government action. It is not a task to be entered upon lightly.
>
> Singh v. Minister of Employment and Immigration (S.C.C., April 4, 1985, per Wilson J. at 61 (unreported))

7. An equally serious task is involved in the determination of the scope of activities protected by a fundamental freedom or right.

> The interpretation should be, as the judgment in Southam emphasizes, a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter's protection. At the same time it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the Charter was not enacted in a vacuum, and must therefore, as the Court's decision in [Skapinker] illustrates, be placed in its proper linguistic, philosophic and historical contexts.
>
> Her Majesty the Queen v. Big M Drug Mart Ltd. (S.C.C., April 24, 1985, per Dickson C.J.C. at p.68 (unreported))

8. It is submitted that the principle that in the first stage of Charter interpretation, Section 2 fundamental freedoms should be interpreted in an absolute fashion without limit to their theoretical scope, does not adequately balance the concerns that Charter protection be full and that good government not be frustrated.

9. In the descriptions of the purposes of individual fundamental rights and freedoms that have been identified, the "absolute theory" has been implicitly rejected.

10. In Southam, the purpose of the protection afforded by Section 8 of the Charter was described as the protection of a reasonable expectation of privacy subject to an assessment as to whether the "public's interest in being left alone by the government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals". (D.L.R. p.652).

11. It may be that this characterization of the right in a non-absolute manner indicates only that the presence in Section 8 of the adjective "unreasonable" renders an absolute approach to interpretation of the scope of Section 8 protection inappropriate.

12. In Big M, the characterization of the freedom guaranteed by Section 2(a) of the Charter where there is no qualifying adjective, also was non-absolute. (Page 72)

> Viewed in this context, the purpose of freedom of conscience and religion becomes clear. The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates provided inter alia only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.

13. The Court of Appeal was sensitive to the task which the principles of interpretation must accomplish. Kerans, J.A. noted both that no artificial restrictions should be imposed on the fundamental freedoms and that as the Charter ". . . is not a Charter of revolution. . . a Court should hesitate to accept an interpretation which would have an extreme effect". (Case on Appeal p.60, 61)

14. The Court adopted an interpretative principle which reconciles these competing observations:

> . . . judicial interpretation of a Charter right must offer some commanding theoretical basis before a novel expression of a right is given primary inviolability. (Case on Appeal p.6)

15. It is submitted that this principle is a variation on the theme pronounced by the Supreme Court of Canada in Big M as quoted above. A "commanding theoretical basis" will be one that brings the "novel expression of a right" under the protection of the Charter in its "proper linguistic, philosophic and historical context".

16. In any event, if the 'absolute' theory of interpretation is applied in this case it does not yield the conclusion advanced by the Appellants. By an absolute theory of interpretation, freedom of association would extend prima facie constitutional protection to all conceivable forms of association - social, contractual, economic, conspiratorial, insurrective, criminal, etc. But the conclusion that the activities of an association would be constitutionally protected is not achieved by giving "association" an absolute interpretation.

ACTION IN CONCERT NOT PROTECTED

17. It is submitted that the Alberta Court of Appeal correctly concluded that the protection of a right of conserted action generally and of a right to strike in particular, was not within the purpose of Section 2(d) of the Charter.

18. The "novel expression of the right" advanced by the Appellants is that it is the purpose of Section 2(d) of the Charter to protect generally a right to engage in action in concert and specifically a right to strike. They contend that this conclusion has a foundation derived by reference to:

a. Dictionaries;

b. The intention of the drafters of the Charter;

c. The scope of freedom of association in international law;

d. The interpretation of the freedom of association by Canadian Courts;

e. The historical status of a "right to strike".

19. It is submitted that none of these sources provide support for the Appellants' contention.

A. Dictionaries

20. The dictionary definitions set out by the Appellants describe association as the action of coming together for a common purpose. The Appellants argue that the definition establishes two actions within the concept of "association": coming together and acting for a common purpose.

21. It is submitted that these two elements are not both "actions". "Coming together" is the action. The other element is descriptive of those engaged in the action.

22. The dictionary does not support the proposition that activities engaged in, in pursuit of the common purpose, are described or embraced by the

word "association". The conduct described by that word does not extend beyond the act of joining or connecting or organizing two or more individuals. The conduct in which an association engages, in pursuit of its objects, must be described by other verbs.

B. The Intention of the Drafters of the Charter.

23. It is submitted that the Court of Appeal correctly concluded that ". . . reliance on individual contributors to this very Canadian document, no matter how important they may have been, is an uncertain guide". (Case on Appeal p.69)

24. The Appellants suggest on the basis of his testimony before the Parliamentary Special Joint Committee, that the acting Minister of Justice that day, Mr. Kaplan, thought that freedom of association would protect something more than the act of coming together. Shortly after the portion quoted after the Appellants, Mr. Kaplan continued:

> We agree with Mr. Robinson, however, that the right to strike would not necessarily be affected by the inclusion of this new expression which is being proposed by the New Democratic Party.
>
> Minutes of Proceedings and Evidence of the Joint Committee Issue #43 at p.69

25. Mr. Kaplan was responding to a suggestion that Section 2(d) of the Charter be amended to read:

> Freedom of association, including the freedom to organize and bargain collectively

25. The portion of the statement made by Mr. Robinson regarding this proposal with which Mr. Kaplan expressed agreement was:

> I hasten to point out that this does not go so far as to entrench in the Constitution the right to strike as such.
>
> What we are talking about is the right of working men and women to organize and come together collectively and to bargain collectively.

> The question of the right to strike is quite deliberately, frankly, not dealt with in this proposed amendment, because we are dealing with a fundamental incident of freedom of association.
>
> (Minutes, p.69)

27. The intention of that "drafter of the Constitution" was that the right to strike was not a "fundamental incidence of freedom of association". To the extent these excerpts provide any direction as to the intended scope of freedom of association, it is direction contrary to the submission of the Appellants.

C. The Scope of Freedom of Association in International Law.

28. The Appellants' formulation of the assistance to be secured from international conventional law proceeds as follows:

(a) The term freedom of association in that international conventional law to which Canada is a party includes a right to strike.

(b) It is a principle of statutory interpretation that Parliament is deemed not to legislate in violation of Canada's international obligations.

(c) Therefore, by the use of the term freedom of association in Section 2(d) the intention must have been to extend protection to a right to strike.

(f) Alternatively, where there are two contending interpretations of the fundamental freedom the preferable one is that which dovetails with Canadian international obligation;

(g) Therefore, the interpretation by which freedom of association includes a right to strike ought to be preferred.

29. It is submitted that even if the two principles of statutory interpretation so described are applicable for interpretation of the Charter, their application does not yield the conclusions argued for.

30. A decision that Section 2(d) of the Charter does not include a "right to strike" does not result in Parliament having legislated in violation of international obligation. A violation of international obligations, as the Appellants' construe them, might exist if the Charter was intepreted as forbidding strike. The Respondent does not contend for such an interpretation. It submits only that the "right to strike" is a subject not dealt with by the Charter.

31. As to the second principle said to be applicable ((f) above) the two contending interpretations of freedom of association are:

(a) that it includes a right to strike, and
(b) that it does not deal with a "right to strike".

Neither of these is inconsistent with Canada's international obligations. The principle is of no assistance.

32. It is submitted that the conclusion of Kerans, J.A. on this subject is unquestionably sound:

> It requires a leap which I am not prepared to make to move from a rule that the constitution should be interpreted to "be consistent with" international obligations to one that we must interpret it to "entrench" international commitments. Specifically, it simply does not follow that, even assuming Canada has agreed in a treaty to protect the right to strike, the Charter must therefore be interpreted to entrench that right.
>
> (Case on Appeal, p.75)

33. In any event, the first element of the Appellants' argument ((a) above) is far from certain. The international covenants upon which the Appellants rely do not on their face support the conclusion that a right to strike is included in the "freedom of association" of which they speak.

34. The relevant provision of International Labour Organization Convention No. 87 states:

> Worker's and employer's organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.

The description of this right clearly stops short of including carrying out the activities and programs that have been formulated.

35. The U.N. Covenant on Economic, Social and Cultural Rights guarantees as an incidence of freedom of association:

> The right to strike provided that it is exercised in conformity with the laws of the particular country.

That guarantee is expressed to be subject to the following limitation:

> This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the state.

On the face of this Convention, it appears that there is no general guarantee of a right to strike. It is twice qualified.

36. As no practical assistance is to be derived from the face of the international covenants themselves, the Appellants' argument is reduced to a submission that some assistance in determining the scope of freedom of association may be derived from the interpretation given to the international covenants by international committees or tribunals.

37. The conclusion of those committees that freedom of association includes a right to strike are acknowledged not to be binding on Canada. They can only have persuasive effect if the Court can view the reasons that gave birth to the proposition and evaluate their merit.

38. The essence of these decisions is that freedom of association is some sort of international labour jargon for ideas and concepts which, in ordinary usage, the words do not bear. (Kerans, J.A., Case on Appeal, p.71).

D. The Interpretation of Freedom of Association by Canadian Courts

38. The scope of freedom of association in s.2(d) of the Charter has been considered in several Canadian cases. All but one of the Courts have concluded that the scope does not extend to the protection of the purposes of the association or the means chosen to achieve them.

39. Representative of the conclusions drawn in these cases is the statement of the British Columbia Court of Appeal in Dolphin Delivery Ltd. v. Retail Wholesale & Department Store Union, Local 580 et al (1984) 10 D.L.R. (4th) 198 at p.207:

> The freedom is that of the individual (i.e. in the words of s.2 of "everyone"). It is the freedom to unite, to combine, to enter into union, to create and maintain an organization of persons with a common purpose. One of the classes of association guaranteed by s.2 is undoubtedly the trade union. Everyone has the right to join a trade union and to pursue, with the other members, the collective interests of the membership. It does not follow that the Charter guarantees the objects and purposes of the union, or the means by which those can be achieved. . .
>
> The freedom to associate carries with it no constitutional protection of the purposes of the association, or the means of achieving those purposes.

40. An appeal to this Honourable Court from this decision was heard in December, 1984 and judgment was reserved. In the Supreme Court of Canada, however, the Appellant abandoned its appeal as to the freedom of association issue and proceeded only on a freedom of expression issue that was also dealt with by the British Columbia Court of Appeal.

41. In Public Service Alliance of Canada v. Her Majesty the Queen in Right of Canada (1985) 11 D.L.R. (4th) 337 (F.C.T.D.) and 387 (F.C.A.). Reid, J. said at p.358:

> . . . the clause "freedom of association" guarantees to trade unions the right to join together, to pool economic resources, to solicit other members, to choose their own

> internal organizational structures, to advocate to their employees and the public at large their views and not to suffer any prejudice or coercion by the employer or state because of such union activities. But it does include the economic right to strike.

42. On the appeal of that case, Mahoney, J. concluded at p.392:

> The right of freedom of association guaranteed by the Charter is the right to enter consensual arrangements. It protects neither the objects of association or the means of attaining them.

43. Other cases where the same conclusion has been reached include:

> Re Prime et al v. Manitoba Labour Board (1984) 3 D.L.R. (4th) 74 (Appeal to Manitoba Court of Appeal allowed on other grounds) (1984) 8 D.L.R. (4th) 641)
>
> Halifax Police Officers and NCO'S Association v. The City of Halifax et al (1984) 11 C.R.R. 353 (S.C.N.S.T.D.)
>
> Re Saskatchewan Government Employees Union et al v. Government of Saskatchewan et al (1985) 14 D.L.R. (4th) 245 (Sask. Q.B.)
>
> Re Pruden Building Ltd. v. Construction and General Workers Union, Local 92 et al (1985) 13 D.L.R. (4th) 584 (Alta. Q.B.)
>
> Newfoundland Association of Public Employees et al v. Her Majesty the Queen in Right of Newfoundland (Supreme Court of Newfoundland Trial Division, January 31, 1985, unreported).

44. The only Canadian case in which the Court arrived at a conclusion as to the scope of the freedom of association different from that arrived at in these cases is Re Service Employees International Union, Local 204 v. Broadway Manor Nursing Home et al (1984) 4 D.L.R. (4th) 231 (Ont. D.C.).

45. There, the Ontario Divisional Court concluded that freedom of association includes the freedom to engage in those activities considered essential to gain the association's objectives. The conclusion was based on the thesis that to conclude otherwise would render the freedom of association

"virtually meaningless" (O'Leary J. at p.284) or a "barren and useless thing" (Galligan, J. at p.248).

46. This decision was appealed to the Ontario Court of Appeal and was allowed on grounds not relevant to the freedom of association issue (1984) 13 D.L.R. (4th) 220. Leave to appeal to the Supreme Court of Canada was denied. (March 14, 1985)

47. It is respectfully submitted that the Broadway Manor case should not be followed for the following reasons:

(a) The freedom of association - the freedom to join, combine or organize together - is an important and valuable freedom and the protection of it is not meaningless and barren in the absence of protection for the activities of the association, contrary to the views of the Ontario Divisional Court. This has been the conclusion of the American Courts, the Privy Council and the Supreme Court of India.

United Federation of Postal Clerks v. Blount 325 Federal Supplement 879 (1971) (U.S. Dist. Crt., Dist. of Columbia).

Collymore v. Attorney General [1970] A.C. 538.

All India Bank Employees Association v. The National Industrial Tribunal 49 A.I.R. 1962 Supreme Court 171.

AUPE IMPACT Magazine, Vol. 3, Number 8, 1982.

AUPE IMPACT Magazine, Winter 1983.

(b) The Ontario Divisional Court focused its attention on the meaning of s.2(d) as if those words appeared in a labour statute. It did not consider the ramifications of its conclusions outside of the realm of labour relations, nor were any authorities considered with regard to the obvious general meaning of freedom of association in the context of a constitutional document meant to apply in all contexts - not just the context of labour relations. The interpretation given

s.2(d) by the Ontario Divisional Court would have undesirable implications in the broad context.

All India Bank Employees Association v. The National Industrial Tribunal 49 A.I.R. 1962 Supreme Court 171.

Collymore v. Attorney General [1970] A.C. 538.

(c) The Divisional Court relied to an inappropriate extent on the interpretation of international documents. Having regard to the actual content of these documents, the context in which they exist and the judicial interpretations they have been given, these documents are not sufficient to support the conclusions of the Divisional Court.

E. Historical Status of a "Right to Strike"

48. The Appellant, Canadian Union of Public Employees, sets out the historical background by which strike has become part of the dispute resolution process in labour relations. It is observed that in the last century the law has been structured so as to accommodate this activity. The analysis of the same history by Wooding, C.J. in Collymore v. Attorney General in the Trinidad and Tobago Court of Appeal is illuminating. (1967) 12 W.I.R. 5.

49. It is submitted that the study of this history is of little ultimate utility to the determination of the scope of freedom of association because there is nothing in that history that links the "freedom to strike" to the freedom of association. The former does not emerge as an incidence of the latter. Nothing in that history compels the conclusion that the Charter extends to the freedom to strike any degree of constitutional protection.

INTERPRETATION OF FREEDOM OF ASSOCIATION IN OTHER CONSTITUTIONS

50. It may be of assistance to consider the judicial interpretations given to provisions of other Constitutions which guarantee freedom of association.

A. United States Of America

51. Freedom of association is considered guaranteed by the American Bill of Rights as an implication of "the right of the people peaceably to assemble" which is protected by the First Amendment.

52. American Courts have not interpreted the guarantee of a right to associate so broadly as to include protection for the activities of the association.

53. In United Federation of Postal Clerks v. Blount 325 Federal Supplement 879 (1971) (U.S. Dist. Crt., Dist. of Columbia) legislation prohibiting strikes by postal clerks was challenged. The Court stated:

> Furthermore, it should be pointed out that the fact that public employees may not strike does not interfere with their rights which are fundamental and constitutionally protected. The right to organize collectively and to select representatives for the purposes of engaging in collective bargaining is such a fundamental right.
>
> There certainly is no compelling reason to imply the existence of the right to strike from the right to associate and bargain collectively.

54. In Indianapolis Education Association v. Lewallen 72 L.R.R.M. 2071 (U.S. Court of Appeals), the following comment was made on the freedom of association:

> There is no question that the right of teachers to associate for the purpose of collective bargaining is a right protected by the First and Fourteenth Amendments to the Constitution.
>
> . . .
>
> The gravamen of the complaint goes to the failure on the part of the defendants-appellants to bargain collectively in good faith. But there is no constitutional duty to bargain collectively with an exclusive bargaining agent. Such duty, when imposed, is imposed by statute. The refusal of the defendants-appellants to bargain in good faith does not equal a constitutional violation of the plaintiffs-appellees' positive rights of association, free speech, petition, equal protection or due process.

55. In Hanover Township Federation of Teachers Local 1954 v. Hanover Community School Corporation 457 F. 2d 456 (1972) (Court of Appeals Seventh Circuit) the Court stated (at pp. 460-461) that although unions enjoy the freedom of expression and although the freedom to join and participate in a union is protected, the freedom does not extend to the activities of a union:

> It does not follow, however, that all activities of a union or its members are constitutionally protected.
>
> Thus the economic Activities of a group of persons (whether representing labour or management) who associate together to achieve a common purpose are not protected by the First Amendment. Such activities may be either prohibited or protected as a matter of legislative policy.

56. The Supreme Court of the United States in Maurice Smith v. Arkansas State Highway Employees Local 1315 (1979), 441 U.S. 463 made the following comments concerning the scope of the right to associate (at p.464):

> The First Amendment right to associate and to advocate 'provides no guarantee that a speech will persuade or that advocacy will be effective' ... But the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it.

B. India

57. The Constitution of India provides:

> "Article 19(1) All citizens shall have the right ...
> (c) to form associations or unions.

58. The scope of this right to form associations is considered in All India Bank Employees Association v. The National Industrial Tribunal 49 A.I.R. 1962 Supreme Court 171, where a union challenged the validity of legislation which kept certain information concerning the assets of banks from being considered in an arbitration process. The argument of the union was that the legislation denied satisfactory arbitration and thus infringed on the right of the union to carry out their purpose. The union alleged that the ability to

carry out their purpose was constitutionally protected by the right to associate. The argument by the union was summarized by the Court as follows (at p.178):

> It is not the contention of any of the learned Counsel that the right of workmen to form unions or associations which is the right guaranteed by sub-cl. (c) of Cl. (1) of Art. 19 on its literal reading has been denied by the impugned legislation. The argument, however, was that it would not be a proper construction of the content of this guaranteed freedom to read the text literally but that the freedom should be so understood as to cover not merely a right to form a union in the sense of getting their union registered so as to function as a union i.e., of placing no impediments or restrictions on their formation which could not be justified as dictated by public order or morality but that it extended to confer upon unions so formed a right to effectively function as an instrument for agitating and negotiating and by collective bargaining secure, uphold or enforce the demands of workmen in respect of their wages, prospects or conditions of work. It was further submitted that unless the guaranteed right comprehended these, the right to form a union would be most illusory.

59. The Supreme Court came to the conclusion that the right to associate does guarantee to all citizens the right to form associations (p.179) but can not logically be extended to also constitutionally protect the achievement of the purposes of the association:

> The point for discussion could be formulated thus: When sub-cl. (c) of Cl. (1) of Art. 19 guarantees the right to form associations, is a guarantee also implied that the fulfillment of every object of an association so formed is also a protected right, with the result that there is a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out in Cl. (4) of Art. 19? Putting aside for the moment the case of Labour Unions to which we shall refer later, if an association were formed, let us say for carrying on a lawful business such as a joint stock company or a partnership, does the guarantee by sub-cl. (c) of the freedom to form the association, carry with it a further guaranteed right to the company or the partnership to pursue its trade and achieve its profit-making object and that the only limitations which the law could impose on

> the activity of the association or in the way of regulating its business activity would be those based on public order and morality under Cl. (4) of Art. 19? We are clearly of the opinion that this has to be answered in the negative.

60. The Court found that it would not be logical to constitutionally protect rights exercised by an association that would not be protected when exercised by individuals. They state (at p.180):

> This would itself be sufficient to demonstrate that the construction which the learned Counsel for the appellant contends is incorrect, but this position is rendered clearer by the fact that Art. 19--as contrasted with certain other Articles like Arts. 26, 29 and 30--grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, i.e., in right of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the citizens composing it are subject.

61. To expand the right to associate such that it protected the right to achieve the object of the association is to inflate the right beyond its intent. The Court states (at p.180):

> It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights. For that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant right and so on, lead to an almost grotesque result.

C. Trinidad and Tobago

62. The Constitution of Trinidad and Tobago (August 31, 1962 amended 1964, 1965) also refers to the freedom of association. It states as follows:

> 1. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist without discriminatin by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,...
>
> (j) freedom of association and assembly;
>
> 2. Subject to the provisions of sections 3, 4 and 5 of the Constitution, no law shall abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognized and declared...

63. The Privy Council considered the meaning of freedom of association in the Trinidad Tobago Constitution in Collymore v. Attorney General [1970] A.C. 538. In that case legislation which substituted compulsory arbitation for strikes and lockouts was challenged. The Court found (at pp. 545-546) that the legislation had the effect of virtually imposing a system of compulsory arbitration for the settlement of trade disputes. The Court summarized the union's argument as follows (at p.546):

> The argument runs thus: 'Freedom of Association' must be construed in such a way that it confers rights of substance and is not merely an empty phrase. So far as trade unions are concerned, the freedom means more than the mere right of individuals to form them: it embraces the right to pursue that object which is the main raison d'etre of trade unions, namely, collective bargaining on behalf of its members over wages and conditions of employment. Collective bargaining in its turn is ineffective unless backed by the right to strike in the last resort. It is this which gives reality to collective bargaining. Accordingly, to take away or curtail the right to strike is in effect to abrogate or abridge that freedom of association which the Constitution confers.

64. It was also argued by the union that a strike is not unlawful and that the legislation makes it illegal for two or more persons to do in association which would be legal for them to do individually (pp. 540-541). The arguments of the union in relation to the interpretation of freedom of association were rejected by the Privy Council.

65. The Privy Council found that the legislation did abridge the right to bargain collectively and the "freedom" to strike (p.547). This however was not the issue before the Privy Council. As it stated (at p.547) "The question is whether the abridgment of the rights of free collective bargaining and of the freedom to strike are abridgments of the right of freedom of association". The Privy Council held that they were in agreement with the Court below, that Court having held as follows (at p.547):

> In my judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable. But the freedom to associate confers neither rights nor licence for a course of conduct or for the commission of acts which in the view of Parliament are inimical to the peace, order and good government of the country.

66. The Privy Council rejected the proposition that freedom of association includes the freedom to collectively bargain and the freedom to strike. In broader terms the proposition that the freedom to pursue the objects of an association is included within the freedom of association has been rejected by the Privy Council.

67. The Privy Council noted (at p.547) that although normally the main purpose of most trade unions is the improvement of wages and employment conditions this is not the only purpose which unions pursue. Unions may have objects which are social, benevolent, charitable and political. Impliedly the Privy Council was noting that to protect the pursuit of one object would also mean that the pursuit of the other objects would also be constitutionally protected. This would inflate the freedom of association beyond what could be seen as the intended meaning.

D. Jamaica

68. The Constitution of Jamaica also recognizes and guarantees the freedom of association.

69. The Supreme Court of Jamaica considered the meaning of this constitutionally entrenched freedom of association in the case of Banton and Others v. Alcoa Minerals of Jamaica (1971) W.I.R. 275. The Court followed the decision of the Privy Council in Collymore, supra.

OTHER CONSIDERATIONS

A. Evolution of Labour Management Relations

70. Labour management relations have historically been an ever changing and evolving creature. The evolutionary process can be seen in the phenomenon of "the strike". Historically strike action was taken for one of three purposes:

(1) to secure recognition of a trade union as the bargaining agent of the employees.

(2) to resolve a dispute arising during the term of a collective agreement and concerning its application.

(3) in the course of collective bargaining of a collective agreement.

71. The brief of evolution of labour relations has seen the substitution of other and arguably better procedures in the place of "strike" in each area. The occasion for "recognition" strikes no longer arises as a result of the certification process. Strike action is no longer lawful to encourage resolution of a dispute arising during the term of and concerning the application of a collective agreement - the grievance arbitration procedure has replaced it. In the legislation under consideration in this Appeal, strike in the third situation has been replaced by compulsory arbitration.

72. It would be perverse if the Charter were interpreted so as to guarantee a right to strike. This would stunt the evolutionary process of improvement of labour management relations procedures by freezing the dispute solving mechanism in the strike-lockout state.

B. Strike Lockout

73. The ability to strike, where presently granted, is a creature of legislation. The same legislation invariably provides employees with the counterpart and counterbalancing ability to lockout. It would be illogical and unjust if strike were to exist without lockout, or lockout without strike. The legislation which is the subject to Constitutional Questions 1, 2 and 3 prohibits both.

74. The argument by which a right to strike is guaranteed by the Charter - ie. that it is a necessary element of freedom of association - will not also support a right to lockout. There is no "association" in the case of most employers.

75. To adopt an interpretation of freedom of association which includes a right to strike would result in there being constitutional protection for only one half of that collective bargaining dispute resolution mechanism.

C. Necessary to Achievement of Goal

76. The argument supporting the conclusion that freedom of association includes a right to strike relies on the proposition that a right to strike is necessary for the achievement of the purposes which motivated the association. The onus should be on the party asserting that remarkable proposition to establish it. The unions affected by the legislation which is the subject of the Appeal have been uninhibited in attaining relatively attractive settlements without a right to strike.

D. Section 2 - Permissive, Restraining, but not Compelling

77. The effect of s.2 of the Charter is to guarantee to each individual that he may engage in certain forms of conduct without restraint. Its effect is positive -- a free range of conduct is preserved for each individual. The remainder of society including the government is restrained from acting in any manner that would encroach upon that free range. But s.2 does not require

positive action on the part of the rest of society or government. Section 2 permits certain conduct, restrains certain conduct, but does not compel any conduct.

78. Thus, in the case of s.2(b) -- freedom of thought, belief, opinion and expression -- the individual is free to say anything he wants, but the rest of society is not obliged to listen.

79. In the case of freedom of association, each individual is free to join with anyone he wishes -- but no other member of society is required by the Charter to recognize the association or to deal with it or otherwise relate to it.

80. Each individual is free to join any union he or she wishes -- but the Charter does not compel his employer to recognize the union or bargain collectively with it. Such compulsion may be imposed by legislation in specific cases -- but it is not imposed by the Charter. Neither does the Charter require governments to set up any or any particular collective bargaining dispute resolution process.

E. Free for an Individual - Free for a Group

81. The Appellants' submission of the purpose of the protection afforded by s.2(d) of the Charter seems to be that it is intended to ensure that groups are constitutionally entitled to engage in conduct which, if it were engaged in by an individual, would be lawful. (Factum of AUPE, para. 20; Factum of CUPE, para. 30)

82. The proposition that certain forms of conduct are to be tolerated by society when they are engaged in by an individual may be beyond the bounds of societal tolerance when engaged in by a group is simple common sense. It is inconceivable that the Charter should constitutionally protect for groups that which is merely tolerated by the law for individuals.

83. If the Appellants' submission were accurate, then the catalog of activities which would have constitutional protection for associations would be subject to extreme variation across the country and over time. For example, if "strike" were defined as "... the cessation of work by one, two or more persons..." in the labour legislation of one province but as "... the cessation of work by two or more persons..." in another province, the scope of freedom of association would be greatly different in the two provinces. Similarly, if the second province amended its definition of "strike" to add the word "one" before the word "two" then the scope of freedom of association in that province would have shrunk overnight.

CONCLUSIONS

84. It is submitted that the scope of freedom of association in s.2(d) of the Charter is the protection of a freedom to join, combine or organize together. It is submitted that the freedom does not extend to constitutional protection of specific activities of the association. In the case of a trade union, freedom of association does not protect a "right to strike".

85. It is submitted that the first three questions stated by the Chief Justice must be answered in the negative.

86. Just as the freedom of association does not guarantee the availability of strike as a dispute resolution mechanism, neither does it guarantee the availability of any other dispute resolution mechanism. Accordingly, the legislation which is referred to in the fourth, fifth and sixth questions stated by the Chief Justice do not infringe freedom of association and those questions should be answered in the negative.

87. As the scope of freedom of association does not extend beyond a freedom to join, combine and organize together, and does not extend to constitutional protection of "right to bargain collectively" an employer is not obliged by reason of the constitutional protection for freedom of association to engage in collective bargaining with its employees. In the situations described in question 7, the Crown is refusing to bargain

collectively with certain of its employees. By being excluded from a bargaining unit an employee is prevented from bargaining with the employer in concert with others. The employee is prevented from carrying out the activity of collective bargaining.

88. The employee is not, however, prevented from joining a union or any other association. The employee can join, combine or organize together with others. However, that association or union to which the employee belongs can not carry out the activity of collective bargaining on behalf of that employee.

89. The exclusion by the Crown of employees from units for collective bargaining is not inconsistent with the freedom of association. Accordingly, it is submitted that question 7 must be answered in the negative.

2. REASONABLE LIMITS DEMONSTRABLY JUSTIFIED IN A FREE AND DEMOCRATIC SOCIETY

90. If it is determined that any of the legislation referred to in the stated constitutional questions 1 to 6, or the situation described in question 7 is inconsistent with the freedom of association referred to in s.2(d) of the Charter, the next question is whether such limitation is a reasonable limit of the freedom within the meaning of s.1 of the Charter.

91. Section 1 of the Constitution Act, 1982, Canadian Charter of Rights and Freedoms provides:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

THE APPLICATION OF SECTION 1

92. In looking at any limit which has been imposed on a Charter freedom the issue to be addressed is whether that limit is:

(a) prescribed by law
(b) a reasonable limit
(c) demonstrably justified in a free and democratic society.

93. If the legislative provisions referred to in questions 1 through 6 do limit the freedom of association they are limits prescribed by law. Statutory provisions are clearly prescribed by law. If the exclusion of employees as described in question 7 is done by or pursuant to legislative provisions then this also would be a limit prescribed by law.

> Re Federal Republic of Germany and Rauca (1983) 141 D.L.R. (3d) 412 at 423 (Ont. H.C.), affirmed by the Ontario Court of Appeal at 145 D.L.R. (3d) 638.

94. The factors to be considered in invoking s.1 were articulated as follows in Re Southam Inc. and The Queen (No. 1) (1983) 3 C.C.C. (3d) 515 (Ont.C.A.):

> In determining the reasonableness of the limit in each particular case, the court must examine objectively its argued rational basis in light of what the court understands to be reasonable in a free and democratic society. Further, there is, it appears to me, a significant burden on the proponent of the limit or limits to demonstrate their justification to the satisfaction of the court. As I said earlier that may be easily done in a number of cases.
>
> In determining whether the limit is justifiable, some help may be derived from considering the legislative approaches taken in similar fields by other acknowledged free and democratic societies. ... In any event I believe the court must come back, ultimately, having derived whatever assistance can be secured from the experience of other free and democratic societies, to the facts of our own free and democratic society to answer the question whether the limit imposed on the particular guaranteed freedom has been demonstrably justified as reasonable one, having balanced the perceived purpose and objectives of the limiting legislation, in light of all relevant consideration, against the freedom or right allegedly infringed. [emphasis added]

95. In Re Federal Republic of Germany and Rauca, supra, the High Court stated the test to be as follows:

> The phrase 'reasonable limits' in s.1 imports an objective test of validity. It is the judge who must determine whether a 'limit' as found in legislation is reasonable or unreasonable. The question is not whether the judge agrees with the limitation but whether he considers that there is a rational basis for it - a basis that would be regarded as being within the bounds of reason by fairminded people accustomed to the norms of a free and democratic society. That is the crucible in which the concept of reasonableness must be tested. [emphasis added]

96. Chief Justice Deschenes in Quebec Association of Protestant School Boards et al v. Attorney General of Quebec et al (No. 2) (1982) 140 D.L.R. (3d) 33; appeal dismissed (1983) 1 D.L.R. (4th) 573 (Que. C.A.), undertakes a thorough review of the meaning of "reasonable limits" (pages 71-78). From this review the Chief Justice drew the following conclusions (at p.77):

1. A limit is reasonable if it is a proportionate means to attain the purpose of the law;

2. Proof of the contrary involves proof not only of a wrong, but of a wrong which runs against common sense; and

3. The courts must not yield to the temptation of too readily substituting their opinion for that of the Legislature.

97. In Dr. Reich v. College of Physicians and Surgeons of Alberta (1984) 8 D.L.R. (4th) 696 Alta. (Q.B.), McDonald J. emphasizes that it must only be shown that the reasonable limit is demonstrably justified as opposed to demonstrably necessary. Nor does s.1 require that the limitation be one which can be demonstrably shown to be the only possible course of action that could be chosen to meet the need. It is concluded by the Court that the standard is therefore lower than if the notion of necessity had been adopted as has been done in other codes of human rights.

98. In Ontario Film and Video Appreciation Society and Ontario Board of Censors (1983) 147 D.L.R. (3d) 58 the Ontario Division Court observed at p.66:

> One thing is sure, however, our courts will exercise considerable restraint in declaring legislative enactments, whether they be statutory or regulatory, to be unreasonable.

On Appeal (1984) 5 D.L.R. (4th) 766 (Ont. C.A.) the Ontario Court of Appeal cautioned that no principle of presumed legislative validity should be enunciated.

99. It is submitted on the basis of these authorities that in determining whether legislation limiting a fundamental freedom is reasonable, the court should consider and assess three factors:

(a) the objective or rational basis of the limitation (rationality);
(b) the extent of the limitation which is to be balanced against its rationality (proportionality);

(c) the laws and practices in other jurisdictions generally regarded as free and democratic societies (comparison).

Further, it is submitted that in the process of considering the reasonableness of the limitation, the court should exercise a high degree of caution before substituting its opinion for that of the legislature.

THE LEGISLATION PROHIBITING STRIKES AND LOCKOUTS (Questions 1, 2, and 3)

A. Rationality

100. Where the employees affected by the legislation prohibiting strikes and lockouts provide essential public services, or are engaged in the support of an essential public service, then the rationale is evident - the provision of those essential services cannot be subject to interruption. This would be the rationale for the provisions referred to in Questions 2 and 3.

101. Arguably, some of those servants affected by the legislation which is the subject of Question 1 do not provide or support an essential service. If this is the case, the rationale for prohibiting strikes in their case is that they are so closely linked to those providing essential services as to make it reasonable that they should be treated in the same way. Further, though some may consider the services non-essential, there is no alternative source of supply of those services -- government supplied services are in a unique position.

102. Also, the limitation is rationally justified on the basis that it is the government that is the employer. The government is in a special and different situation from other employers. It is at least equally as concerned about general governmental policy as it is about pure economic considerations. Strike has traditionally been a means of placing economic pressure on employers. In the case of the Crown, strike places political pressure on the government to at least as great an extent as it places economic pressure on it. It is not reasonable that one segment of the public (civil servants) should have a substantial means of placing political pressure

on the government not available to the public at large or any other segment of it.

Alberta Hansard, May 10, 1977, pp. 1245-1251 and 1257-1266; May 31, 1983, pp.1267-1278

Letter of March 29, 1984 from the Honourable Leslie G. Young to the Honourable Andre Ouellet

Wellington, H.H. and Winter, R.K., The Limits of Collective Bargaining in the Public Sector (1969) 78 Yale L.J. 1107 at pp. 1119, 1123 and 1124

Simmon and Swan, Labour Relations Law in the Public Sector, Industrial Relatons Centre, Queen's University, Kingston, 1982, at 1-120, 235-245 and 293-308

Weiler, Paul C., New Horizons for Canadian Labour Law, 1980, Meredith Memorial Lectures, Federal and Provincial Labour Law at pp.6-7

Heenan, Roy L., Current Issues in Canadian Labour Law, 1980, Meredith Memorial Lectures at pp.16-20

Adams, G.W., The Ontario Experience With Interest Arbitration Relations Industrielles, Vol. 36 No. 1 (1981) 225

Collective Bargaining in the Essential and Public Service Sectors, Proceedings of a Conference, April 1975, Edited by Morley Gunderson

Loewenburg, Compulsory Arbitration, 1976, D.C. Heath and Company, Chapters 6 and 7, A-1, C-1

Re Alberta Union of Provincial Employees and the Crown (1981) 120 D.L.R. (3d) 590 (Alta.Q.B.); 1982 130 D.L.R. (3d) 191 (Alta.C.A.)

Collymore v. Attorney General [1970] A.C. 538

Finkelman & Goldenberg, Collective Bargaining in the Public Service, The Federal Experience in Canada, pp. 454, 465 and Table 3

B. Proportionality

203. If a freedom of association has been limited it has only been limited in proportion to the means necessary to achieve the reasonable objective.

While the ability to strike has been removed this is only in relation to public sector employees. As well, the ability to strike has been replaced with a procedure which is equally as effective at protecting the interest of employees and employers.

AUPE IMPACT Magazine, Vol. 3, Number 8, 1982

AUPE IMPACT Magazine, Winter 1983

C. Comparison

104. Prohibiting strikes and lockouts in the public sector and for essential services is not uncommon in Canada and in other jurisdictions. On an international level it has been recognized that strikes may be prohibited in the public sector without violating international agreements.

Adams, G.W., The Ontario Experience With Interest Arbitration, Relations Industrielles, Vol. 36 No. 1 (1981) 225

Collective Bargaining in the Essential and Public Service Sectors, Proceedings of a Conference, April 1975, Edited by Morley Gunderson

Essential Service Dispute Legislation in Canada, Research Bulletin, 1982, Nova Scotia Department of Labour and Manpower

Public Service Collective Bargaining Legislation in Canada as prepared by Alberta Department of Labour

General Survey on the Application of the Conventions on Freedom of Association and on the Right to Organize and Collective Bargaining, I.L.O. Geneva, 1973, para.201

Conciliation and Arbitration Procedures in Labour Disputes - A Comparative Study, I.L.O. Geneva, 1980 at pp.28-3 and 159-164

222nd Report of the Committee on Freedom of Association (I.L.O.) Case No. 1147 at p.22, para.116

230th Report of the Committee on Freedom of Assocation (I.L.O.) Case No. 1147, re-examined at p.3, para.18.

Macken, Arbitration Industrial Laws, 1980, The Law Book Company Limited, pp. 25, 26, 140

Craig, The System of Industrial Relations in Canada, 1983, Prentice-Hall Canada Ltd., p. 225, 250

THE LEGISLATION LIMITING THE SUBJECTS OF COMPULSORY LEGISLATION

(Question 4 re s.48, Question 6 re s.2(2))

105. Section 48(2) of the Public Service Employee Relations Act referred to in question 4 places limits on what can be referred to an arbitration board. Section 2(2) of the Police Officers' Collective Bargaining Act provides that pension benefits may not be the subject of collective bargaining.

A. Rationality

106. The matters by which section 48 of the Public Service Employee Relations Act are not to be the subject of collective bargaining are all matters traditionally not the subject of collective agreements. Traditionally, matters set out in s.48(2)(a), (b), and (c) have been reserved to management - they are matters concerning the direction of work that management must have in its absolute control.

107. As to s.48(2)(d) regarding pensions, civil service pensions are the subject of the Public Service Pensions Act, R.S.A. 1980, P-35, which establishes pension entitlements and the levels of contribution and benefits. Accordingly, those matters cannot be set by collective agreement and cannot therefore be the subject of compulsory arbitration.

108. A similar rationale supports s.2(2) of the Police Officers' Collective Bargaining Act. Pensions for police are the subject of other legislation - the Special Forces Pensions Act, R.S.A. 1980, c.S-21.

Finkelman, J. & Goldenberg, Collective Bargaining in the Public Service, The Federal Experience in Canada, at pp. 149-220

Swan, K.P., Safety Belt or Strait-Jacket? Restrictions on the Scope of Public Sector Collective Bargaining, Essays in Collective Bargaining and Industrial Democracy, p.21

Simmons and Swan, Labour Relations Law in the Public Sector, Industrial Relations Centre, Queen's University, Kingston, pp. 182-231.

Craig, The System of Industrial Relations in Canada, 1983, Prentice-Hall Canada Ltd., p. 225, 250.

B. Proportionality

109. It is difficult to conceive of most of the subjects referred to in s.48 of the Public Service Employee Relations Act as being of great concern to the employees as a collectivity. Conversely the subjects are of obvious vital concern to the employer.

110. It is submitted that the balance is heavily in favour of the limit (if it is one) being reasonable.

111. As far as pensions are concerned, it may be noted that s.3 of the Public Service Pensions Act establishes a board for the administration of pensions under that Act, one member of which must be a member of A.U.P.E. This tends to diminish the significance of the limitation of the fundamental freedom - if the section constitutes such limitation.

C. Comparison

112. Comparative studies show legislation of this type to be common in other jurisdictions.

Essential Service Dispute Legislation in Canada, Research Bulletin, 1982, Nova Scotia Department of Labour and Manpower.

Public Service Collective Bargaining Legislation in Canada as prepared by Alberta Department of Labour

THE LEGISLATION DIRECTING CERTAIN MATTERS TO BE CONSIDERED

(Questions 4, 5, and 6)

A. Rationality

113. Just as the Matrimonial Property Act directs the court to look at certain matters in making a distribution of property between spouses, the legislation under consideration in the Reference requires compulsory arbitration tribunals to consider certain information in arriving at their decision. It is not unreasonable for the government to consider the specific matters listed relevant and to desire arbitration tribunals to have reference to them.

> The Centre for Industrial Relations, University of Toronto, Bill 111, Conference Materials, April 13, 1984, p. 5049-5046
>
> Legislative Assembly of Ontario, Standing Committee on Social Development, December 5, 1983, regarding Public Sector Prices and Compensation Act
>
> Simmon and Swan, Labour Relations Law in the Public Sector, Industrial Relations Centre, Queen's University, Kingston, pp. 324-337
>
> Ruling of the Commissioner, March 8, 1984, British Columbia Compensation Stabilization Program

B. Proportionality

114. If it constitutes a breach of a fundamental freedom for the government to require arbitration tribunals to consider certain matters, it is a breach of miniscule extent. The legislation does not require the arbitration tribunal to put any particular weight on those considerations or any weight at all. It simply directs that they be considered, not that they be acted upon.

C. Comparison

115. Comparable legislation exists in other provinces.

Public Service Collective Bargaining Legislation in Canada as prepared by Alberta Department of Labour

Ruling of the Commissioner, March 8, 1984, British Columbia Compensation Stabilization Program

Craig, The System of Industrial Relations in Canada, 1983, Prentice-Hall Canada Ltd., p. 225, 250

EXCLUSION OF CERTAIN EMPLOYEES FROM UNIT FOR COLLECTIVE BARGAINING

(Question 7)

A. Rationality

116. The categories of employees listed in Question 7 are either employees who are involved in positions where they would be exercising managerial functions which by tradition and logic make it inappropriate for them to be members of the bargaining unit with whom management must deal, or they are employed in capacities where it must be possible to place reliance upon them without fear of their judgment being influenced by the fact that they are a member of a collective bargaining unit dealing with the government.

Finkelman, J. & Goldenberg, Collective Bargaining in the Public Service, The Federal Experience in Canada, Institute for Research on Public Policy, pp. 27-40

Simmons and Swan, Labour Relations in the Public Sector, Industrial Relations Centre, Queen's University, 1982, pp. 134-147

Freedom of Association and Procedures for Determining Conditions of Employment in the Public Service, International Labour Conference, 63rd Session, 1977 Report VII (1) at pp. 19-22

Freedom of Association and Collective Bargaining General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 69 Session, 1983 at pp. 27-29

B. Proportionality

117. It should be observed that the persons in situations described in paragraph 7 in Question 7 are not denied membership in the union, only in the collective bargaining unit. If that constitutes a limit on freedom of association, it is not as extensive as would be the case if they were denied membership in the union.

C. Comparison

118. Other jurisdictions exclude various employees from bargaining units.

Public Service Collective Bargaining Legislation in Canada as prepared by Alberta Department of Labour

CONCLUSION

119. It is submitted that the legislative provisions referred to in Questions 1 through 6 in the situation referred to in Question 7, if they are inconsistent in any respect with freedom of association, the limitation on that freedom which they create is reasonable and demonstrably justified in a free and democratic society.

PART IV

NATURE OF RELIEF DESIRED

120. The Respondents desire that these Appeals be dismissed with costs and that the constitutional questions stated by the Chief Justice be answered in the negative.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Edmonton, Alberta, the 10th day of May, A.D. 1985.

RODERICK A. McLENNAN, Q.C.
of Counsel for the Respondent

PART V

TABLE OF AUTHORITIES

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