

The Impact of the Supreme Court's decision in MPAO—Expanded Rights to Collective Bargaining

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The Supreme Court of Canada's recent decision in *Mounted Police Association of Ontario v Attorney General of Canada* ("MPAO") reboots the Court's case law on freedom of association. This landmark ruling has significant potential implications for the development of the law and for workers' rights.

Legal impact of MPAO

For labour and constitutional lawyers, the most significant outcome of the case is the Court's rejection of the "effective impossibility" test and the confirmation that workers seeking to make their case under section 2(d) of the *Charter* need only demonstrate that government action has substantially interfered with their right to collective bargaining. The Court also clarified the relationship between collective bargaining and freedom of association, explaining that the freedom of association always requires that workers enjoy a meaningful right to collectively bargain.

Impact on RCMP members

MPAO's immediate impact for RCMP members is profound. It confirms that RCMP members have a constitutionally protected right to collectively bargain through an independent association of their choosing. While RCMP members are not necessarily entitled to be included in the *Public Service Labour Relations Act* ("PSLRA"), the Court ruled that their exclusion from this Act violates the freedom of association, noting the RCMP's long-standing hostility to unionization of the force, including the imposition of the unconstitutional Staff Relations Representative Program. On its face, this would appear to require the Government to provide a statutory regime to protect certain basic rights for RCMP members. While the Court's previous ruling in *Attorney General of Canada v Fraser* highlights the limits of this requirement, the decision in MPAO nonetheless underscores the seriousness with which the Court viewed the Government's approach to associational activity within the RCMP.

Impact on workers' rights

This decision has broad potential implications for other workers, although the precise impact in circumstances beyond the RCMP is uncertain. For example, the judgment could open the door for other groups of workers to challenge their exclusion from statutory collective bargaining regimes. Vulnerable workers who have been historically excluded, such as students and casual employees who work for the federal public service, could potentially rely on *MPAO* to argue that, like RCMP members, the purpose of their exclusion from the *PSLRA* was to prevent them from engaging in collective bargaining, and therefore that exclusion should be struck down.

Alternatively, these workers could argue that, although they fall outside a statutory bargaining regime, the Government is nonetheless required to bargain with the chosen representatives of these workers, or the representatives of a subgroup of these workers, otherwise known as a minority union. The Court explained in *MPAO* that it is permissible for the Government to impose a statutory model of representation based on majoritarianism and exclusivity. These groups can argue, however, that there is no reason why such a model would automatically apply where Parliament has not imposed it. Requiring the Government to bargain with subgroups of excluded workers would recognize the constitutional rights of all employees to a process of collective bargaining while respecting Parliament's right to impose a particular statutory regime if it so chooses.

MPAO further implies that workers who have been excluded from collective bargaining because of the perceived sensitive nature of their work – such as members of management in the federal public service or non-civilian members of the Canadian Armed Forces – are also entitled to a process of meaningful collective bargaining. Although the Government could try to justify certain restrictions to this right under section 1 of the *Charter*, it cannot simply presume such limits exist. Nor can it avoid providing these workers with the right to be represented through an independent association of their choosing simply because the Government has decided to develop a less adversarial bargaining process.

Conclusion

MPAO revitalizes the role of the Court as a protector of basic workers' rights. The significance of this development will depend at least in part on the Court's pending decision on the right to strike in the *Saskatchewan Federation of Labour* case, which is scheduled to be released this Friday.

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