

SENATE HEARINGS

*“An Act to amend the Public Service Labour Relations Act,
the Public Service Labour Relations and Employment Board Act and other Acts
and to provide for certain other measures”*

SUBMISSION OF MOUNTED POLICE MEMBERS' LEGAL FUND

Submission of the Mounted Police Members' Legal Fund concerning Bill C-7

June 6, 2016

Executive Summary

- The Mounted Police Members' Legal Fund has significant concerns regarding Bill C-7:
 - (1) Bill C-7 does not address the unilateral actions that RCMP management is currently taking that are having a significant negative impact on RCMP members; and,
 - (2) Bill C-7 will exclude a number of very important matters from the collective bargaining process after a bargaining agent is certified.

RCMP Management's Unilateral Actions

- Effective March 31, 2016, RCMP management unilaterally terminated the voluntary dues collection system that has provided the Legal Fund with the resources it uses to perform its work on behalf of RCMP members. In effect, this entirely cut-off the payment of membership dues to the Legal Fund.
- Then, effective May 16, 2016, RCMP management unilaterally terminated the Staff Relations Representative Program and established the Members Workplace Services Advisor program. Under the new program, RCMP members no longer have access to any form of collective representation on workplace matters or other issues that affect their dignity and welfare.
- On this basis, the Legal Fund requests that the Senate amend Bill C-7 or take other steps to ensure that the longstanding and voluntary system of automatic payroll deductions for Legal Fund members' dues is reinstated.

Unfair Restrictions in Bill C-7

- Bill C-7 imposes significant restrictions on the collective bargaining process in the new labour relations scheme. These restrictions create an unfair imbalance favouring RCMP management over any association certified under Bill C-7 in a manner that is at odds with the Supreme Court of Canada’s decision in *Mounted Police Association of Ontario*.
- **On this basis, the Legal Fund requests that the Senate amend Bill C-7 so that the following matters are subject to collective bargaining:**
 - **Transfers from one position to another and appointments;**
 - **Staffing levels;**
 - **Appraisals;**
 - **Discharges or demotions;**
 - **Conduct, including harassment;**
 - **Equipment; and,**
 - **Standards, procedures, and processes concerning these matters.**

Introduction

The Mounted Police Members’ Legal Fund (the “Legal Fund”) represents the interests of the approximately 16,500 members of the Royal Canadian Mounted Police (“RCMP”) who have chosen to become members of the Legal Fund. At present, the Legal Fund is the largest and most representative voluntary association of RCMP members.

The Legal Fund has significant concerns regarding Bill C-7, the legislation introduced by the Government to reform the RCMP’s labour relations system in accordance with the Supreme Court of Canada’s January 2015 decision in *Mounted Police Association of Ontario v. Canada* (“MPAO”).¹

First, Bill C-7 does *not* address actions that RCMP management is currently taking that are having a significant and negative impact on RCMP members, including with respect to their current ability to access any form of collective representation regarding workplace issues. In effect, the current absence of a legislative labour relations framework has resulted in a serious

¹ *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1.

power imbalance between RCMP management and members. At present, RCMP management is taking advantage of this situation to the detriment of RCMP members.

Second, Bill C-7 would exclude a number of very important matters from the collective bargaining process after a bargaining agent is certified, including transfers and appointments of members, staffing levels, performance appraisals, serious forms of discipline (discharge and demotion), equipment, and conduct such as harassment. The exclusion of these matters from the collective bargaining process will further exacerbate the serious power imbalance that currently exists between RCMP management and members.

As is described in greater detail below, the Legal Fund believes that these aspects of Bill C-7 are entirely inconsistent with the Supreme Court's decision in *MPAO* and the interests of RCMP members. Changes to Bill C-7 are essential to respect the *MPAO* decision and to avoid a new round of *Charter* litigation.

Background: The Legal Fund and the RCMP Labour Relations System

The Legal Fund was established in 1997. It is a not-for-profit corporation that is totally independent from the RCMP.

All RCMP members and commissioned officers are eligible to join the Legal Fund. At present, the Legal Fund has a national membership of approximately 16,500 RCMP members. Legal Fund members join voluntarily and, until recently, signed up for automatic payroll deduction for their dues, which are presently \$4.00 per pay or \$104 per year.

The Legal Fund's mandate is to provide financial and other support to RCMP members so that they can advance their interests concerning issues that affect their welfare and dignity through legal proceedings and other avenues.

If the Legal Fund were not currently in existence and available to its members, then those members requesting Legal Fund assistance would face financial ruin and/or the destruction of their character and career.

RCMP Management's Unilateral Actions Against RCMP Members

RCMP management is currently taking actions that are having a significant and detrimental impact on RCMP members. Two courses of action are particularly noteworthy.

First, the RCMP Commissioner has unilaterally ended the automatic payroll deduction system by which Legal Fund members remit their voluntary dues to the Legal Fund. In effect, the Commissioner has entirely cut-off the payment of membership dues to the Legal Fund.

Second, the Commissioner terminated the Staff Relations Representative Program ("SRRP") and instituted a Member Workplace Services Advisor ("MWSA") program. Under this program, RCMP members do not have access to a form of collective representation in respect of workplace matters or other issues that may impact their dignity and welfare.

Further information concerning each course of action is set out below.

End of Voluntary Payroll Deductions

As described above, since its inception the Legal Fund's resources have come from membership dues. Specifically, Legal Fund members voluntarily elected to have membership dues of \$4.00 per pay deducted from their pay cheques by the RCMP and remitted to the Legal Fund. RCMP Commissioner Philip Murray agreed to implement this system in 1997 and this agreement was subsequently confirmed in 2008 by Commissioner William Elliott.

However, on February 18, 2016, RCMP Commissioner Paulson notified the Legal Fund that this payroll deduction system would be terminated on March 30, 2016. This notification was not preceded by any discussion or consultation between RCMP management and the Legal Fund regarding this issue. Furthermore, this notification came just three hours before RCMP management sent out a Bulletin to all RCMP members advising them of this significant change.

The Legal Fund immediately sought to engage the Commissioner in a dialogue regarding this issue, including by proposing possible solutions to address any management concerns with the payroll deduction system. However, the Commissioner never responded to the Legal Fund.

Instead, On March 31, 2016, an Assistant Commissioner sent a memo to the Legal Fund stating that management would not consider any approaches other than terminating automatic payroll deductions.

Ultimately, effective March 31, 2016, RCMP management terminated the longstanding, voluntary dues collection system that has provided the Legal Fund with the resources it uses to perform its work on behalf of RCMP members.

This has had a very serious impact on the Legal Fund. Indeed, it could result in the end of the Legal Fund. This is because the Legal Fund depended exclusively on the automatic payroll deduction process to fund its work on behalf of RCMP members. While the Legal Fund is currently working to build an alternate process, it is having significant difficulty in this regard due, among other reasons, to the fact that Legal Fund members are posted across the country and internationally and are subject to frequent transfers.

In any case, the funding and operations of the Legal Fund have been undermined by the unilateral termination of the longstanding system of automatic payroll deductions, and this in turn has had a detrimental impact on the ability of RCMP members to advance their individual and collective interests on workplace and other issues. In particular, the RCMP's unilateral action has greatly weakened the Legal Fund by reducing the resources it has to perform work on behalf of its members. This has exacerbated the power imbalance that exists between RCMP management and RCMP members, and will provide the RCMP with an even greater capacity to exercise its power contrary to the rights and interests of members.

Creation of the Members Workplace Services Advisors (MWSA) Program

Effective May 16, 2016, RCMP management unilaterally terminated the SRRP and established the MWSA program. Under the MWSA program, RCMP members no longer have access to any form of collective representation on workplace matters or other issues that affect their dignity and welfare. Rather, RCMP members now only have access to "advisors" who have no mandate to represent members; their role is strictly limited to providing advice and guidance to members on how to deal with a workplace issues (limited to issues related to the Code of Conduct, grievances, discharge and other serious matters (*i.e.* a shooting involving a member)).

This stands in stark contrast to the SRRP system, under which RCMP members had access to Staff Relations Representatives ("SRRs") who would act as a member's representative and advocate in respect of workplace matters.

Accordingly, the effect of the establishment of the MWSA program is to prevent RCMP members from obtaining any form of meaningful representation concerning important workplace issues. Furthermore, it will do so until a bargaining agent is certified under the new legislative framework, which may be years away.

RCMP Management's Course of Action Violates Freedom of Association

In addition to having a detrimental impact on RCMP members, the course of conduct described above is entirely inconsistent with the reasoning and findings of the Supreme Court in *MPAO*.

In *MPAO*, the Supreme Court concluded that the RCMP's labour relations system substantially interfered with RCMP members' freedom of association in violation of section 2(d) of the *Canadian Charter of Rights and Freedoms*.

However, the Court also expressly held that the system did not result in a complete denial of the constitutional freedom of association.

The Supreme Court's conclusion in this regard is reinforced by findings made by the trial judge, who concluded that:

- The collaboration that occurs between the SRRs and management is extensive and carried out in good faith by everyone involved; and,
- RCMP management listens carefully and with an open mind to the views of SRRs in the consultative process established by the SRRP.

Notably, the Ontario Court of Appeal also made the following comments respecting the Legal Fund:

The third reason I conclude that the exercise of the fundamental freedom of association by RCMP members is not "effectively impossible" is the existence of the Legal Fund. As noted above, the Legal Fund is a voluntary not-for-profit

corporation. Some 14,000 RCMP members have joined the fund and some 100 additional members join each month. It was established to help its members with various employment-related issues. It assists RCMP members by acting to advance their dignity and welfare, in relation to matters arising under RCMP policies and directives. It is funded exclusively by the dues of its members, and is entirely self-governed, independent and autonomous, with independent, democratically elected directors and officers. The Legal Fund plays a role that is complementary to, and supportive of, the SRRP.²

These findings were not overturned by the Supreme Court.

Thus, while the Supreme Court concluded that the RCMP's labour system did not meet the applicable constitutional standard, it certainly did not conclude that associational activity in respect of workplace issues was impossible or entirely absent.

Moreover, there is nothing in the Supreme Court's decision that would support the total elimination of the current RCMP labour system - and with it the only forum for collective representation that RCMP members have - prior to the full implementation of a new collective bargaining regime for RCMP members. To the contrary, RCMP management's decisions to eliminate the SRRP and "defund" the Legal Fund are not supported in any way by the *MPAO* decision and only serve to exacerbate the freedom of association violation identified in *MPAO* by making the labour relations situation far worse for RCMP members.

To summarize, rather than *improving* RCMP members' ability to exercise their freedom of association, RCMP management's current course of action is totally *eliminating* collective representation in the RCMP.

On this basis, the Legal Fund requests that the Senate amend Bill C-7 or take other steps to ensure that the longstanding and voluntary system of automatic payroll deductions for Legal Fund members' dues is reinstated.

The Restrictions in Bill C-7 Must Be Eliminated

² *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2012 ONCA 363, para. 132.

The Legal Fund is also very concerned about the significant restrictions that Bill C-7 would impose on the collective bargaining process in the new labour relations scheme, thereby creating a serious and unfair imbalance favouring RCMP management over any association certified under Bill C-7. This is completely unacceptable given that the Supreme Court of Canada in *MPAO* (i.e. the very case that led to Bill C-7) held that a labour law will violate section 2(d) of the *Charter* if it seriously disrupts the bargaining balance between employees and their employer: “A process that substantially interferes with a meaningful process of collective bargaining by reducing employees’ negotiating power is therefore inconsistent with the guarantee of freedom of association enshrined in s. 2(d)”.³

Two recent decisions of the Ontario Superior Court of Justice have struck down labour legislation under the *Charter* because the laws in question created a serious imbalance that prevented employees from engaging in a fair process of collective bargaining: *Canadian Union of Postal Workers v. Canada (Attorney General)*⁴ and *Ontario Public Service Employees Union v. Ontario*.⁵ Both decisions make clear that section 2(d) requires labour laws to respect the need for a fair balance between an employer and a representative association.

Keeping in mind the legal requirement to ensure a balance in labour relations at the RCMP, the Legal Fund submits that the following matters should be negotiable terms and conditions of employment under the new collective bargaining scheme:

- Transfers from one position to another and appointments;
- Staffing levels;
- Appraisals;
- Discharges or demotions;
- Conduct, including harassment;
- Equipment; and,
- Standards, procedures, and processes concerning these matters.

³ *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, paras. 71-72.

⁴ 2016 ONSC 418, per Firestone J. at para. 192: “Recall that the concept of balance is crucial to a determination of substantial interference.”

⁵ 2016 ONSC 2197, per Lederer J. at para. 274: “As the case law suggests ... we are looking to balance the power in the relationship between employers and employees.”

The Legal Fund also submits that an interest arbitrator should not be required to consider the criteria set out in section 148(1) of the *Public Service Labour Relations Act* when making an award in respect of RCMP members.

As described above, there is a significant power imbalance between RCMP management and members. To correct this power imbalance, Bill C-7 must level the playing field between management and members by requiring the parties to engage in good faith bargaining concerning members' terms and conditions of employment, and then a fair and balanced process of interest arbitration failing a negotiated agreement.

However, by imposing the above-noted restrictions on the collective bargaining process, Bill C-7 has the effect of *entrenching* management's ability to take unilateral action in respect of RCMP members' terms and conditions of employment.

It should be emphasized that the above-noted matters are very important to RCMP members. For example, it is common for RCMP detachments and offices to be understaffed, especially in smaller or remote areas. In turn, concerns regarding officer safety and "burn out" are ongoing issues for many RCMP officers. However, staffing levels and transfers are excluded from collective bargaining under Bill C-7.

The Legal Fund does not understand why these restrictions are appropriate or necessary. Indeed, no other police force in Canada is subject to similar collective bargaining restrictions. The Legal Fund believes that excluding these matters from collective bargaining will entrench the power imbalance that already exists within the RCMP and that RCMP members will continue to be denied their guaranteed *Charter* right of freedom of association.

On this basis, the Legal Fund submits that the above-noted restrictions on collective bargaining currently included in Bill C-7 should be eliminated.

Conclusion

Labour relations within the RCMP have been the source controversy and litigation for many years. The *MPAO* decision provides an opportunity to settle the matter once and for

all by implementing a fair and balanced collective bargaining regime that protects and promotes the freedom of association of RCMP members. Bill C-7 in its current form squanders this opportunity by creating a system that is deeply and unfairly weighted in favour of RCMP management and by providing no immediate protection against unilateral actions of RCMP management that harm the rights and interests of RCMP members. The Legal Fund believes that Bill C-7 in its current form will only serve as a trigger for further controversy and litigation, since voluntary associations representing RCMP members (like the Legal Fund) will have little choice but to challenge the legislation in the courts as a further violation of freedom of association. Amendments to Bill C-7 are essential if RCMP members are to enjoy a fair and stable labour relations regime.

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