The Slow Evolution of

***Reference Re Public Service Employee Relations Act (Alta.),* 1987 CanLII 88 (SCC), [1987] 1 SCR 313,**

Excerpt from dissenting judgment of Dickson C.J., Wilson J.:

…

International Law

57. International law provides a fertile source of insight into the nature and scope of the freedom of association of workers. **Since the close of the Second World War, the protection of the fundamental rights and freedoms of groups and individuals has become a matter of international concern**. A body of treaties (or conventions) and customary norms now **constitutes an international law of human rights under which the nations of the world have undertaken to adhere to the standards and principles necessary for ensuring freedom, dignity and social justice for their citizens. The *Charter* conforms to the spirit of this contemporary international human rights movement, and it incorporates many of the policies and prescriptions of the various international documents pertaining to human rights. The various sources of international human rights law--declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms--must, in my opinion, be relevant and persuasive sources for interpretation of the *Charter*'s provisions.**

58. **In particular, the similarity between the policies and provisions of the *Charter* and those of international human rights documents attaches considerable relevance to interpretations of those documents by adjudicative bodies**, in much the same way that decisions of the United States courts under the Bill of Rights, or decisions of the courts of other jurisdictions are relevant and may be persuasive. The relevance of these documents in *Charter* interpretation extends beyond the standards developed by adjudicative bodies under the documents to the documents themselves. As the Canadian judiciary approaches the often general and open textured language of the *Charter*, "the more detailed textual provisions of the treaties may aid in supplying content to such imprecise concepts as the right to life, freedom of association, and even the right to counsel". J. Claydon, "International Human Rights Law and the Interpretation of the Canadian Charter of Rights and Freedoms" (1982), 4 *Supreme Court L.R.* 287, at p. 293.

59. Furthermore, **Canada is a party to a number of international human rights Conventions which contain provisions similar or identical to those in the *Charter*. Canada has thus obliged itself internationally to ensure within**

its borders the protection of certain fundamental rights and freedoms which are also contained in the *Charter*. The general principles of constitutional interpretation require that these international obligations be a relevant and persuasive factor in *Charter* interpretation. As this Court stated in *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295, at p. 344, interpretation of the *Charter* must be "aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the *Charter*'s protection". **The content of Canada's international human rights obligations is, in my view, an important indicia of the meaning of "the full benefit of the *Charter*'s protection". I believe that the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.**

60. In short, though I do not believe the judiciary is bound by the norms of international law in interpreting the *Charter*, these norms provide a relevant and persuasive source for interpretation of the provisions of the *Charter*, especially when they arise out of Canada's international obligations under human rights conventions.

(a) *The United Nations Covenants on Human Rights*

61. In an effort to make more specific the broad principles agreed to under the United Nations ***Universal Declaration of Human Rights*,** G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), two human rights covenants were adopted unanimously by the United Nations General Assembly on December 16, 1966: the U.N. ***International Covenant on Economic, Social and Cultural Rights***, G.A. Res. 2200 A (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966), and the U.N**. *International Covenant on Civil and Political Rights***, G.A. Res. 2200 A (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966). Canada acceded to both Covenants on May 19, 1976 and they came into effect on August 19, 1976. Prior to accession the Federal Government obtained the agreement of the provinces, all of whom undertook to take measures for implementation of the Covenants in their respective jurisdictions. See generally, *International Covenant on Economic, Social and Cultural Rights: Report of Canada on Articles 10 to 12* (1982), at pp. 1–8.

62. **Both of the Covenants contain explicit provisions relating to freedom of association and trade unions**. Article 8 of the U.N. *International Covenant on Economic, Social and Cultural Rights* provides the following:

Article 8

1. The States Parties to the present Covenant undertake to ensure:

> (*a*) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
>
> (*b*) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
>
> (*c*) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security of public order or for the protection of the rights and freedoms of others;
>
> (*d*) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
>
> 2. 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.
>
> 3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

63. Article 8(1)(*c*) extends protection to trade union activities by protecting their right "to function freely". Moreover, explicit reference to strike activity is found in Article 8(1)(*d*). **According to it, Canada has undertaken internationally to ensure "The right to strike, provided that it is exercised in conformity with the laws of the particular country". This qualification that the right must be exercised in conformity with domestic law does not, in my view, allow for legislative abrogation of the right though it would appear to allow for regulation of the right:** see *Re Alberta Union of Provincial Employees and the Crown in Right of Alberta* 1980 CanLII 1108 (AB QB), (1980), 120 D.L.R. (3d) 590 (Alta. Q.B.), at p. 597. Article 8(2) provides that the rights in Article 8 can be restricted in respect of members of the armed forces, police, or those involved in the administration of the State. This provision, however, is subject to the non-derogation clause, Article 8(3).

64. The relevant provisions of the U.N. *International Covenant on Civil and Political Rights* are found in Article 22 of that document. They are as follows:

Article 22

> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
>
> 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 22 provides for "freedom of association with others, including the right to form and join trade unions for the protection of [the individual's] interests". Restrictions are justified in certain circumstances under Article 22(2). The third section of Article 22, like Article 8(3) of the *International Covenant on Economic, Social and Cultural Rights*, makes it clear that the article is not to be interpreted as authorizing legislative measures that would prejudice the guarantees of International Labour Organization Convention No. 87 to which I shall now turn.

(b) ***International Labour Organization (I.L.O.) Convention No. 87***

65. As a specialized agency of the United Nations, with representatives of labour, management, and government, the I.L.O. is concerned with safeguarding fair and humane conditions of employment. In the present appeal, it is important to consider the *Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize*, 67 U.N.T.S. 18 (1948), which **was ratified by Canada in 1972 and came into force on March 23, 1972.** As of December 31, 1984, 97 states had ratified it. The relevant provisions of Convention No. 87 include the following:

PART I. FREEDOM OF ASSOCIATION

Article l

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the

provisions of articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined in national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term `organisation' means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

66. **These provisions have been interpreted by various I.L.O. bodies including: the Committee on Freedom of Association, established by the Governing Body in 1950–51 to examine complaints of violations of trade union rights; the Committee of Expert**s, which assesses government reports on the application of I.L.O. standards and conventions in member states; and Commissions of Inquiry, appointed by the Governing Body to investigate particular complaints of non–compliance by member–states. (See generally, N.

Valticos, *International Labour Law* (1979).)

67. Interpretations of conventions are only authoritative under the I.L.O. Constitution if rendered by the International Court of Justice (and tribunals under Article 37(2) in lieu thereof) or, it would appear, by Commissions of Inquiry where the dispute is not referred to the Court: see E. Osieke, "The Exercise of the Judicial Function with Respect to the International Labour Organization" (1974–75), 47 *Brit. Y.B. Int'l L.* 315. The decisions of the Committee on Freedom of Association and the Committee of Experts are not binding though, as M. Forde points out, the former "comprise the cornerstone of the international law on trade union freedom and collective bargaining": "The European Convention on Human Rights and Labor Law" (1983), 31 *Am. J. Comp. L.* 301, at p. 302.

68. **The general principle to emerge from interpretations of Convention No. 87 by these decision–making bodies is that freedom to form and organize unions, even in the public sector, must include freedom to pursue the essential activities of unions, such as collective bargaining and strikes, subject to reasonable limits.** A Commission of Inquiry, appointed to investigate a complaint against Greece, held that strike activity is implicitly protected by Convention No. 87: *I.L.O. Official Bulletin: Special Supplement*, vol. LIV, No. 2, 1971. The Committee of Experts has reached the same conclusion in its deliberations, pointing out that prohibitions on the right to strike may, unless certain conditions are met, violate Convention No. 87:

> 214. In the opinion of the Committee, the principle whereby the right to strike may be limited or prohibited in the public service or in essential services, whether public, semi–public or private, would become meaningless if the legislation defined the public service or essential services too broadly. As the Committee has already mentioned in previous general surveys, the prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Moreover, if strikes are restricted or prohibited in the public service or in essential services, appropriate guarantees must be afforded to protect workers who are thus denied one of the essential means of defending their occupational interests. Restrictions should be offset by adequate impartial and speedy conciliation and arbitration procedures, in which the parties concerned can take part at every stage and in which the awards should in all cases be binding on both parties. Such awards, once rendered, should be rapidly and fully implemented.

(*Freedom of Association and Collective Bargaining: General Survey by the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4(B)),

International Labour Conference, 69th Session, Geneva, International Labour Office, 1983, at p. 66.)

69. These **same principles are manifest in the reports of the Freedom of Association Committee of the Governing Body**. In a recent summary of principles established by the Freedom of Association Committee in its decisions, the following paragraphs appear:

> 416. A general prohibition of strikes seriously limits the means available to trade unions to further and defend the interests of their members (Article 10 of Convention No. 87) and the right to organise their activities (Article 3).
>
> 417. Where legislation directly or indirectly places an absolute prohibition on strikes the Committee has endorsed the opinion of the Committee of Experts on the Application of Conventions and Recommendations that such a prohibition may constitute an important restriction of the potential activities of trade unions, which would not be in conformity with the generally recognised principles of freedom of association.
>
> 386. Referring to its recommendation that restrictions on the right to strike would be acceptable if accompanied by conciliation and arbitration procedures, the Committee has made it clear that this recommendation does not refer to the absolute prohibition of the right to strike but to the restriction of that right in essential services or in the public service, in relation to which adequate guarantees should be provided to safeguard the workers' interests.
>
> 387. The substitution by legislative means of compulsory arbitration for the right to strike as a means of resolving labour disputes can only be justified in respect of essential services in the strict sense of the term (i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population).

(*Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the I.L.O.*, 3rd. ed., Geneva, International Labour Office, 1985).

70. These principles were recently applied in relation to a number of complaints originating in Canada, in particular, in Alberta, Ontario and Newfoundland. A number of the provisions impugned as being in violation of Convention No. 87 are the subject of this Reference. It is helpful, in the present context, to look at

the Freedom of Association Committee's conclusions and recommendations on the provisions relating to prohibitions on strike activity. These conclusions and recommendations were approved unanimously by the I.L.O.'s Governing Body.

71. The complaint (Case No. 1247) was launched by the Canadian Labour Congress on behalf of the Alberta Union of Provincial Employees against the Government of Canada (Alberta). In discussing s. 93 of the *Public Service Act*, which bans strike activity of provincial government employees, the Committee summarized the principles applicable to complaints about infringements of Convention No. 87 as follows:

> 131. The Committee recalls that it has been called to examine the strike ban in a previous case submitted against the Government of Canada/Alberta (Case No. 893, most recently examined in the 204th Report, paras. 121 to 134, approved by the Governing Body at its 214th Session (November 1980).). In that case the Committee recalled that the right to strike, recognised as deriving from Article 3 of the Convention, is an essential means by which workers may defend their occupational interests. It also recalled that, if limitations on strike action are to be applied by legislation, a distinction should be made between publicly-owned undertakings which are genuinely essential, i.e. those which supply services whose interruption would endanger the life, personal safety or health of the whole or part of the population, and those which are not essential in the strict sense of the term. The Governing Body, on the Committee's recommendation, drew the attention of the Government to this principle and suggested to the Government that it consider the possibility of introducing an amendment to the Public Service Employee Relations Act in order to confine the prohibition of strikes to services which are essential in the strict sense of the term. In the present case, the Committee would again draw attention to its previous conclusions on section 93 of the Act.

(*I.L.O. Official Bulletin*, vol. LXVIII, Series B, No. 3, 1985, pp. 34-35.)

The Committee reached similar conclusions in respect of s. 117.1 of the *Labour Relations Act*:

> 132. Linked to this question of restrictions on the right to strike is one of the specific written allegations, namely that an amendment contained in Bill 44 to section 117.1 of the Labour Relations Act prohibits the right to strike of all hospital employees. The Committee notes that this broad exclusion covers kitchen help, janitors, gardeners, etc. but that the Government told the representative of the Director-General that only small groups were affected by section 117.1 and that this question was, in any event, being challenged in the Alberta

> Court of Appeal and the Canadian Supreme Court. Given that this provision is not sufficiently specific as regards the important qualification of "essential employee", the Committee refers to the principle set out in the above paragraph concerning circumstances in which recourse to strike action may be prohibited. It requests the Government to re□examine section 117.1 so as to confine the prohibition of strikes to services which are essential in the strict sense of the term.

(*I.L.O. Official Bulletin*, *supra*, p. 35.)

(c) *Summary of International Law*

72. The most salient feature of the human rights documents discussed above in the context of this case is the close relationship in each of them between the concept of freedom of association and the organization and activities of labour unions. As a party to these human rights documents, Canada is cognizant of the importance of freedom of association to trade unionism, and has undertaken as a binding international obligation to protect to some extent the associational freedoms of workers within Canada. Both of the U.N. human rights Covenants contain explicit protection of the formation and activities of trade unions subject to reasonable limits. Moreover, there is a clear consensus amongst the I.L.O. adjudicative bodies that Convention No. 87 goes beyond merely protecting the formation of labour unions and provides protection of their essential activities □□ that is of collective bargaining and the freedom to strike.

(b) *International Law Protects Collective Bargaining as Part of Freedom of Association*

Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27 (CanLII), [2007] 2 SCR 391

Excerpt from Majority Reasons, McLachlin C.J., LeBel J.:

…

69 Under Canada's federal system of government, the incorporation of international agreements into domestic law is properly the role of the federal Parliament or the provincial legislatures. However, **Canada's international obligations can assist courts charged with interpreting the *Charter*'s guarantees** (see *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (CanLII), [2002] 1 S.C.R. 3, 2002 SCC 1, at para. 46). Applying this interpretive tool here supports recognizing a process of

collective bargaining as part of the *Charter*'s guarantee of freedom of association.

70 Canada's adherence to international documents recognizing a right to collective bargaining supports recognition of the right in s. 2(*d*) of the *Charter*. ***As Dickson C.J. observed in the Alberta Reference, at p. 349, the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.***

71 The sources most important to the understanding of s. 2(*d*) of the *Charter* are **the *International Covenant on Economic, Social and Cultural Rights*, 993 U.N.T.S. 3 ("*ICESCR*"), the *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 ("*ICCPR*"), and the International Labour Organization's (ILO's) *Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize*, 68 U.N.T.S. 17 ("*Convention No. 87*"). Canada has endorsed all three of these documents, acceding to both the *ICESCR* and the *ICCPR*, and ratifying *Convention No. 87* in 1972. This means that these documents reflect not only international consensus, but also principles that Canada has committed itself to uphold.**

72 **The *ICESCR*, the *ICCPR* and *Convention No. 87* extend protection to the functioning of trade unions in a manner suggesting that a right to collective bargaining is part of freedom of association.** The interpretation of these conventions, in Canada and internationally, not only supports the proposition that there is a right to collective bargaining in international law, but also suggests that such a right should be recognized in the Canadian context under s. 2(*d*).

73 Article 8, para. (1)(*c*) of the *ICESCR* guarantees the "right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others." This Article allows the "free functioning" of trade unions to be regulated, but not legislatively abrogated (*per* Dickson C.J., *Alberta Reference*, at p. 351). Since collective bargaining is a primary function of a trade union, it follows that Article 8 protects a union's freedom to pursue this function freely.

74 Similarly, Article 22, para. 1 of the *ICCPR* states that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." Paragraph 2 goes on to say that no restriction may be placed on the exercise of this right, other than those necessary in a free

and democratic society for reasons of national security, public safety, public order, public health or the protection of the rights of others. This Article has been interpreted to suggest that it encompasses both the right to form a union and the right to collective bargaining: *Concluding Observations of the Human Rights Committee Canada*, U.N. Doc. CCPR/C/79/Add.105 (1999).

75 ***Convention No. 87* has also been understood to protect collective bargaining as part of freedom of association**. Part I of the Convention, entitled "Freedom of Association", sets out the rights of workers to freely form organizations which operate under constitutions and rules set by the workers and which have the ability to affiliate internationally. Dickson C.J., dissenting in the *Alberta Reference*, at p. 355, relied on *Convention No. 87* for the principle that the ability "to form and organize unions, even in the public sector, must include freedom to pursue the essential activities of unions, such as collective bargaining and strikes, subject to reasonable limits".

76 *Convention No. 87* has been the subject of numerous interpretations by the ILO's Committee on Freedom of Association, Committee of Experts and Commissions of Inquiry. These interpretations have been described as the "cornerstone of the international law on trade union freedom and collective bargaining": M. Forde, "The European Convention on Human Rights and Labor Law" (1983), 31 *Am. J. Comp. L.* 301, at p. 302. While not binding, they shed light on the scope of s. 2(*d*) of the *Charter* as it was intended to apply to collective bargaining: *Dunmore*, at paras. 16 and 27, *per* Bastarache J., applying the jurisprudence of the ILO's Committee of Experts and Committee on Freedom of Association.

77 A recent review by ILO staff summarized a number of principles concerning collective bargaining. Some of the most relevant principles in international law are summarized in the following terms (see B. Gernigon, A. Odero and H. Guido, "ILO principles concerning collective bargaining" (2000), 139 *Intern'l Lab. Rev.* 33, at pp. 51-52):

> A. The right to collective bargaining is a fundamental right endorsed by the members of the ILO in joining the Organization, which they have an obligation to respect, to promote and to realize, in good faith (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up).
>
> ...
>
> D. The purpose of collective bargaining is the regulation of terms and conditions of employment, in a broad sense, and the relations between the parties.

...

H. The principle of good faith in collective bargaining implies recognizing representative organizations, endeavouring to reach an agreement, engaging in genuine and constructive negotiations, avoiding unjustified delays in negotiation and mutually respecting the commitments entered into, taking into account the results of negotiations in good faith.

I. In view of the fact that the voluntary nature of collective bargaining is a fundamental aspect of the principles of freedom of association, collective bargaining may not be imposed upon the parties and procedures to support bargaining must, in principle, take into account its voluntary nature; moreover, the level of bargaining must not be imposed unilaterally by law or by the authorities, and it must be possible for bargaining to take place at any level.

J. It is acceptable for conciliation and mediation to be imposed by law in the framework of the process of collective bargaining, provided that reasonable time limits are established. However, the imposition of compulsory arbitration in cases where the parties do not reach agreement is generally contrary to the principle of voluntary collective bargaining and is only admissible: [cases of essential services, administration of the State, clear deadlock, and national crisis].

K. Interventions by the legislative or administrative authorities which have the effect of annulling or modifying the content of freely concluded collective agreements, including wage clauses, are contrary to the principle of voluntary collective bargaining. These interventions include: the suspension or derogation of collective agreements by decree without the agreement of the parties; the interruption of agreements which have already been negotiated; the requirement that freely concluded collective agreements be renegotiated; the annulment of collective agreements; and the forced renegotiation of agreements which are currently in force. Other types of intervention, such as the compulsory extension of the validity of collective agreements by law are only admissible in cases of emergency and for short periods.

L. Restrictions on the content of future collective agreements ... are admissible only in so far as such restrictions are preceded by consultations with the organizations of workers and employers and fulfil the following conditions: [restrictions are exceptional measures; of limited duration; include protection for workers' standards of living].

(See also, M. Coutu, *Les libertés syndicales dans le secteur public*

(1989), at pp. 26-29.)

78 **The fact that a global consensus on the meaning of freedom of association did not crystallize in the *Declaration on Fundamental Principles and Rights at Work*, 6 IHRR 285 (1999), until 1998 does not detract from its usefulness in interpreting s. 2(*d*) of the *Charter*.** For one thing, the Declaration was made on the basis of interpretations of international instruments, such as *Convention No. 87*, many of which were adopted by the ILO prior to the advent of the *Charter* and were within the contemplation of the framers of the *Charter*. For another, the *Charter*, as a living document, grows with society and speaks to the current situations and needs of Canadians. Thus Canada's *current* international law commitments and the current state of international thought on human rights provide a persuasive source for interpreting the scope of the *Charter*.

79 In summary, international conventions to which Canada is a party recognize the right of the members of unions to engage in collective bargaining, as part of the protection for freedom of association. It is reasonable to infer that s. 2(*d*) of the *Charter* should be interpreted as recognizing at least the same level of protection: *Alberta Reference*.