

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

Appellant
(Respondent in the Court of Appeal)

– and –

**MICHAEL J. FRASER on his own behalf and on behalf of the UNITED FOOD AND
COMMERCIAL WORKERS UNION CANADA, XIN YUAN LIU, JULIA McGORMAN
and BILLIE-JO CHURCH**

Respondents
(Appellants in the Court of Appeal)

– and –

ONTARIO FEDERATION OF AGRICULTURE

Intervener
(Intervening Party in the Court of Appeal)

– and –

**THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF
ALBERTA, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, THE
ATTORNEY GENERAL OF NEW BRUNSWICK, THE ATTORNEY GENERAL OF
NEWFOUNDLAND AND LABRADOR, THE ATTORNEY GENERAL OF NOVA
SCOTIA, THE ATTORNEY GENERAL OF QUEBEC
and THE ATTORNEY GENERAL OF SASKATCHEWAN**

Interveners

AFFIDAVIT OF MURRAY E. BROWN

I, Murray E. Brown, of Lower Sackville, County of Halifax, Province of Nova Scotia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chair of the Board of the proposed intervener The Mounted Police Members' Legal Fund / Fonds de Recours Juridique des Membres de la Gendarmerie (the "Legal Fund"). I have served on the executive of the Legal Fund for the last several years. I have been involved in the Legal Fund from its inception in 1997. As such, I have personal knowledge of the facts hereinafter deposed to, except where otherwise indicated.

The Legal Fund

2. The Legal Fund is a not-for-profit corporation under the *Canada Corporations Act*, R.S. 1985, c. S-20. It was incorporated by Letters Patent, dated February 14, 1997.

3. The Legal Fund has 16,433 regular and civilian members. Each of these 16,433 members are members of the Royal Canadian Mounted Police (“RCMP”). At present, approximately 75% of the members of the RCMP are members of the Legal Fund. Membership in the Legal Fund is voluntary.

4. The Legal Fund is funded exclusively by the dues of its members. Aside from interest earned on its accounts, the Legal Fund does not receive any monies from any other entity. The Legal Fund often discusses matters with the RCMP while pursuing its objects and conducting its activities, as described below. However, it is entirely self-governed, independent and autonomous, with independent, democratically-elected directors and officers who all are members of the Legal Fund.

5. The Legal Fund has received no support, encouragement or advice from the RCMP in the making of this application.

The labour relations regime for RCMP members

6. RCMP members have a labour relations regime. But it is different from the sort of labour relations regime that exists in a unionized environment in an industrial workplace. It is also different from the labour relations regime that is established for federal public service employees in the *Public Service Labour Relations Act*, S.C. 2003, c. 22.

7. That Act establishes a particular sort of union and collective bargaining regime for many federal public employees. However, s. 2(1) of that Act exempts a number of federal public employees from that regime. In particular, in the definition of “employee” in s. 2(1), it exempts “a person who is a member or special constable of the Royal Canadian Mounted Police or who is employed by that Force under terms and conditions substantially the same as those of one of its

members.” As a result, none of the members of the RCMP and none of the members of the Legal Fund are subject to the particular labour relations regime established by that Act.

8. Unlike many other federal employees, RCMP members are subject to restrictions. They are not permitted to “publicly criticize...petition or complain about the administration, operation, objectives or policies of the Force, unless authorized by law: the *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361, s. 41. However, this same *Regulation*, in s. 96, sets up a unique labour relations regime for RCMP members. Section 96 of this *Regulation* allows for the “representation of the interests of all members with respect to staff relations matters” by way of a Staff Relations Representative Program (the “SRRP”).

9. The SRRP is described in paras. 13-31 of a recent judgment of the Ontario Superior Court of Justice, *MPAO et al. v. Canada*, unreported, April 6, 2009. I attach, as Exhibit “1,” a copy of this judgment. The following facts about the SRRP and how it works, to my knowledge, are correct and are set out in the *MPAO* case.

10. The work of the SRRP is carried out by Staff Relations Representatives who are democratically elected by members of the RCMP. The collective body of Staff Relations Representatives is known as the National Caucus. There are also Regional and Divisional Caucuses.

11. The Staff Relations Representatives provide information, guidance and support to RCMP members and represent the members’ interests in the RCMP. An agreement between the SRRP and the Commissioner outlines the roles and responsibilities of all participants. Under that agreement, management is to “recognize the role of the SRRP”, consult, work with and “respond to proposals and requests from Staff Relations Representatives in a timely and meaningful fashion” and “provide rationale[s] for major decisions” (at para. 16 of the *MPAO* judgment).

12. Under s. 22 of the *Royal Canadian Mounted Police Act*, R.S. 1985, c. R-10, Treasury Board has the exclusive authority to establish pay and allowances for RCMP members. It does so by receiving recommendations from a “RCMP Pay Council.” The Pay Council is a five person panel comprised of two management representatives, two Staff Relations Representatives and an impartial chair. The Pay Council solicits the views and input of the RCMP members,

formulates recommendations, and presents them to the Commissioner. Treasury Board makes the final decision.

The role and governance of the Legal Fund

13. The objects of the Legal Fund, as set out in the Letters Patent, are, among other things, to resolve issues that arise between members of the Legal Fund and the Government of Canada and to take action concerning any matter that affects the dignity or welfare of a member of the Legal Fund, including matters that may arise from time to time under RCMP policies and directives. I attach, as Exhibit "2," a copy of the Letters Patent dated February 14, 1997. The objects of the Legal Fund are set out in paragraph 1 of the application which is attached to and forms part of the Letters Patent.

14. Ever since the Legal Fund has been established, its officers and directors have also been Staff Relations Representatives involved in the SRRP. In this capacity, they work alongside RCMP members in the workplace, hear their concerns and, where appropriate, provide assistance and engage in activities. There are many types of assistance and activities. For example, the Legal Fund puts members in contact with lawyers when legal assistance is needed, often concerning workplace, job-related, or policing issues. It considers applications from members for financial assistance and, when necessary and appropriate, when satisfactory mechanisms are not present and when the terms and conditions are met, the Legal Fund grants them funding for legal proceedings concerning workplace, job-related, or policing issues. It provides members with advice and information about employment and workplace-related issues. It brings members' concerns (including workplace, employment and pay-related concerns) to the attention of management, media and politicians, when necessary and appropriate, on occasion achieving results through dialogue and cooperative forms of negotiation. It works, through meetings and presentations, with the assistance of research organizations and independent consultants, to ensure that the Government of Canada and others adopt policies and laws that are favourable to the dignity and welfare of the members of the Legal Fund, and members of the RCMP generally. As the Legal Fund carries out these functions in pursuit of its objects, the Legal Fund plays a role that is complimentary and supportive of the SRRP. The Legal Fund is part of the overall labour

relations regime within the RCMP, representing and advancing members' interests and working for their benefit and welfare.

15. If the exemption set out in s. 2(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 did not exist, if RCMP members were unionized and subject to the regime set out in that Act, and if the SRRP were eliminated, many of the objects pursued and activities performed by the Legal Fund would no longer be necessary. A union would pursue many, if not all, of those objects and perform many, if not all, of those activities. I foresee a danger that the Legal Fund would cease to be viable or perhaps even exist in such a circumstance.

Challenges to the labour relations regime for RCMP members

16. In *Delisle v. Canada*, [1999] 2 S.C.R. 989, which I attach as Exhibit "3", this Honourable Court considered a challenge to the constitutionality of the exemption of RCMP members from the "normal" public service labour relations scheme set out in the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (the predecessor to the *Public Service Labour Relations Act*, S.C. 2003, c. 22). A majority of this Honourable Court in *Delisle* held that the exemption of RCMP members from the "normal" public service labour relations scheme did not offend s. 2(d) of the *Charter*.

17. In the *MPAO* case (which is attached as Exhibit "1"), the Ontario Superior Court of Justice has declared that s. 96 of the *Regulations* is of no force or effect. In doing so, it held that this Honourable Court's decision in *Delisle* no longer bound it, because of the later decision in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391. In reaching this conclusion, the Ontario Superior Court of Justice relied very heavily on the decision of the Court of Appeal for Ontario in *Attorney General of Ontario v. Fraser* – the case presently under appeal.

18. The Ontario Superior Court of Justice has suspended the declaration that it made in the *MPAO* case for 18 months. Unless an appeal is allowed, its declaration will take effect and the SRRP will cease to exist in October 2010. I understand that the *MPAO* case is now in the Court of Appeal and that a notice of appeal and a notice of cross-appeal have been filed.

The Legal Fund and this appeal

19. Counsel for the Legal Fund have advised me and I do believe that there is a high degree of probability that this Honourable Court's reasons for judgment in *Fraser* will directly affect the outcome of the *MPAO* case on appeal. I believe this advice to be true because of the frequent and significant references to *Fraser* in the *MPAO* case. As a result, *Fraser* will determine whether the Legal Fund will continue to exist in its current form or at all and whether it can continue to exercise the functions it currently has. This would be a direct and significant effect not only on the Legal Fund as a corporate entity but also on the 16,433 members of the Legal Fund, who collectively comprise 75% of the members of the RCMP. Consistent with its objectives, the Legal Fund seeks to intervene in this matter, a matter that will affect the welfare of its members, the continuation of benefits from the Legal Fund to its members, and perhaps, the very practical existence of the Legal Fund itself.

20. The Legal Fund seeks to intervene in *Fraser* in order to provide this Honourable Court with submissions and to answer questions concerning the nature of the system of labour relations in the RCMP, as discussed in the *Delisle* and *MPAO* cases. It will be for this Honourable Court, when drafting its reasons, to consider whether *Delisle* is still good law and to take into account the impact of its decision on systems of labour relations that are not traditional union-management, adversarial models (such as the system within the RCMP, as discussed in the *Delisle* and *MPAO* cases).

21. The Legal Fund intends to submit that s. 2(d) of the *Charter* and the jurisprudence of this Court do not dictate a specific model of collective bargaining. Labour relations regimes (where required) can take various possible forms, and many of those forms adequately protect employees' s. 2(d) freedoms, consistent with the special needs of particular workplaces.

22. The Legal Fund has a well-informed perspective concerning what systems of labour relations can work and be respectful of employees' rights in an organization like the RCMP and other similar agencies that work with the RCMP, both federal and provincial. The RCMP engages in a variety of sensitive activities, including front-line policing in all of Canada's

provinces and territories (except Quebec and Ontario), federal policing, security and protection of public officials, politicians and foreign dignitaries, national security, intelligence gathering, international peacekeeping, and anti-terrorism activities. These contexts will be the exclusive concern of the Legal Fund before this Honourable Court.

23. To my knowledge, the RCMP is not intervening before this Honourable Court. The Attorney General of Canada which represents the wider interests of the Government of Canada, including all of its numerous and diverse agencies, political interests and other Crown interests, is before this Honourable Court, but it does not have the deep “in the trenches” appreciation that the Legal Fund has of issues, concerns and problems that workers in the area of policing and security encounter in the workplace. It also does not have the Legal Fund’s appreciation of the actual day-to-day operation of the SRRP, a particular model of labour relations that is different from a typical unionized environment. For these reasons, I believe that the submissions of the Legal Fund will be different from those of any other party. If granted intervener status, I shall instruct my counsel to take all reasonable steps to ensure that the Legal Fund:

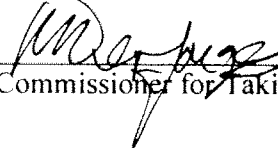
- will restrict itself to the context of policing and security, as exemplified by the RCMP; and
- will make all reasonable efforts to advance submissions that are different from those of any other party.

24. I make this affidavit in support of the Legal Fund’s application for leave to intervene in the appeal in *Attorney General of Ontario v. Fraser et al.*, Court file no. 32968 and for no other purpose.



MURRAY E. BROWN

SWORN BEFORE ME
in the City of Ottawa, in the
Province of Ontario,
this 14th day of September, 2009



A Commissioner for Taking Affidavits