

Alberta Court Freezes Union Legislation

written by Rory Lodge | February 26, 2014



The Alberta Court of Queen's Bench granted an injunction to prevent an Alberta law from coming into force until a Constitutional challenge to the law is decided.

The *Alberta Public Service Salary Restraint Act* ("PSSRA"), which imposes wage rate terms on roughly 24,000 members of the Alberta Union of Public Employees ("AUPE") for the next four years, was set to take effect March 31, 2014.

[In a blog posted December 9, 2013](#), we highlighted the ways in which PSSRA may be challenged pursuant to the *Charter of Rights and Freedoms* (the "*Charter*") after the law passed on December 4, 2013. PSSRA received Royal Assent and came into force on December 11, 2013. AUPE filed a Statement of Claim on December 12, 2013, alleging, among other things, that PSSRA violated AUPE members' individual rights to freedom of association.

The Alberta government and relevant AUPE unit had been involved in collective bargaining since their previous collective agreement expired March 31, 2013. The parties went to mediation in July 2013, and steps were taken in October 2013 for the parties to go to compulsory, binding arbitration in 2014. AUPE was entitled to compulsory, binding arbitration under the *Public Service Employee Relations Act* ("PSERA"), which also makes it illegal for public employees in Alberta to go on strike.

However, PSSRA, which the Alberta government introduced in the Legislature in November 2013 with limited debate and without notice to AUPE, eliminated AUPE's entitlement to compulsory, binding arbitration with regard to the current round of collective bargaining. In its Statement of Claim, AUPE sought, among other things, an interlocutory or permanent injunction preventing the enforcement of PSSRA and allowing the compulsory, binding arbitration process to continue.

In his decision ([Alberta Union of Provincial Employees v Alberta, 2014 ABQB 97](#)), Thomas J cited *Ontario (Attorney General) v Fraser*, 2011 SCC 20 ("*Fraser*"), which states freedom of association in a union context means people have the Charter-protected right to make collective representations to their employers, who then have an obligation to consider the representations in good faith and provide a meaningful

bargaining process.

Thomas J then stated:

[65] ... Alberta did not meet its obligation to negotiate in good faith. The timeline and events prior to consideration and passage of Bill 46 are interpreted by me to conclude Alberta never intended that the 2013 negotiations with AUPE were to be meaningful.

In his analysis, Thomas J held that the injunction decision did not effectively provide a final result in the action, and, as such, AUPE's threshold to prove "a serious issue to be tried" was that its case was not frivolous or vexatious on its merits. The government had argued that the injunction would effectively decide the action, and, as such, a more substantial review of the strength of AUPE's *PSSRA* challenge was required.

The government also failed to convince the Court that three recent appellate judgments provide analogous cases in which legislated limits on government employee salaries were not held to breach the employees' rights to freedom of association (*Assn. of Justice Counsel v Canada (Attorney General)*, 2012 ONCA 530, leave denied [2012] SCCA No 430; *Federal Government Dockyard Trades and Labour Council v Canada (Attorney General)*, 2013 BCCA 371, leave to the Supreme Court of Canada sought Nov. 18, 2013; and *Meredith v Canada (Attorney General)*, 2013 FCA 112, leave to appeal granted Sept. 19, 2013, [2013] SCCA No 263).

Thomas J distinguished the appellate judgments on a number of grounds, including: negotiations between the Alberta government and AUPE were ongoing at the time *PSSRA* was passed, *PSSRA* ends the potential for future collective bargaining between the Alberta government and AUPE for a long period (three years), and *PSSRA* nullifies an existing mandatory consultation process.

After Thomas J's ruling, the Alberta Deputy Premier stated the government will appeal, adding the government believes there are errors of fact and law in the decision.

Given the confusion following the Supreme Court of Canada ("SCC") decision in *Fraser* in 2011 with regard to what constitutes "good faith" and a "meaningful" process in the context of union negotiations with governments, further clarity on this issue from the SCC would be helpful. If clarity is not provided when the SCC decides the above referenced appellate judgments (or even if it is), AUPE's *PSSRA* challenge may also wind up in front of Canada's top court



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