Supreme Court Of Canada Decides That Exclusion Of Managers From The Québec Labour Code Is Not A Breach Of The Charter

In a recent decision, *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, the Supreme Court of Canada determined that the exclusion of managers from the definition of employee in the Quebec *Labour Code* (the "**Code**") did not violate section 2(d) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") or section 3 of the Québec *Charter of human rights and freedoms* (the "**Québec Charter**").

BACKGROUND

The Association des cadres de la Société des casinos du Québec (the "**Association**") represents first-level managers working at four casinos run by the Société des casinos du Québec inc. (the "**Société**"), a subsidiary of a government corporation. The Association sought to obtain certification under the Code and thus benefit from the protections and processes available under that statute. However, the definition of "employee" under section 1(1)(1) of the Code specifically excludes persons employed as managers.

The Association was successful at the tribunal level, which found that the exclusion in section 1(1) was inoperable. While the Superior Court overturned that ruling, the Québec Court of Appeal restored the tribunal's decision, subject to a 12-month suspension of the effects of the Tribunal's decision regarding the inoperability of the exclusion in section 1(1)(1) of the Code. The Société appealed to the Supreme Court.

SUPREME COURT OF CANADA DECISION

Under section 2(d) of the Charter, everyone has the fundamental freedom of association. Similarly, section 3 of the Québec Charter protects the freedom of association. According to the majority of the SCC panel, the framework for evaluating alleged infringements of freedom of association under s. 2(d) has two parts:

1. Whether the activities are protected under s. 2(d) and
2. Whether the government action has, in purpose or effect, substantially interfered with those activities.

Under the first part of the framework, the majority concluded that the relevant activities were protected under section 2(d) of the Charter, which includes the right to form an association with sufficient independence from the employer, to make collective representations to the employer, and to have those representations considered in good faith.

In its analysis under the second part of the framework, the majority concluded that the purpose of the legislative exclusion is not to interfere with managers' associational rights. They adopted the explanation for the exclusion set out in one of the concurring judgments that,

"the legislature's purposes in excluding managers from the definition of "employee" under the *Labour Code* were to distinguish between management and operations in organizational hierarchies; to avoid placing managers in a situation of conflict of interest between their role as employees in collective bargaining and their role as representatives of the employer in their employment responsibilities; and to give employers confidence that managers would represent their interests, while protecting the distinctive common interests of employees."

The majority also found that the Association had failed to show that the managerial exclusion had interfered with its members' rights to meaningful collective bargaining. For example, the managers had organized successfully, the Association had reached an agreement with the Société, and the Société was collecting union dues on the Association's behalf. Although the Société had failed to respect all aspects of the agreement at times, the Association could seek remedies in court.

The majority concluded that the Association has not shown that the legislative exclusion of first-level managers from Québec's general collective labour relations regime infringes its members' freedom of association under section 2(d) of the Canadian Charter or section 3 of the Québec Charter. The other members of the panel concurred in the result but differed on the applicable framework. Their reasons are set out in two concurring judgments.

KEY TAKEAWAYS

This decision is important for employers in Canada as labour relations legislation in all jurisdictions currently excludes managers from the definition of employee and thus from the protection and processes provided by statute. The Supreme Court of Canada has recognized the important role of managers in the organization and the need for employers to be able to rely on managers acting in the organization's best interests. While managers are not precluded from organizing, they cannot be certified under labour legislation and rely on the processes available under those statutes. Remedies for such associations of managers would be through the courts.

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