Supreme Court Of Canada: Exclusion Of Managers From Definition Of "Employee" In Québec Labour Code Does Not Violate The Charter

On April 19, 2024, the Supreme Court rendered *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec* in which it concluded that the exclusion of managers from the definition of "employee" in the Québec *Labour Code* (*Code*) does not violate the right to freedom of association found in the *Canadian Charter of Rights and Freedoms* (*Charter*).

In 2009, the Association des cadres de la Société des casinos du Québec (Association) filed a petition for certification under the *Code* to represent a bargaining unit of operations supervisors employed by the Société des casinos du Québec inc. (Society). The operations supervisors were front-line managers who supervised unionized card dealers but did not participate in the direction of the Society or play a role in the labour relations process.

The Society took the position the operations supervisors were "managers" under the *Code* and, as such, were expressly excluded from the definition of "employee" and could not be certified as a bargaining unit under the *Code*. The Association filed a claim with the Administrative Labour Tribunal, arguing the managerial exclusion in the *Code* violated section 2(d) of the *Charter* and section 3 of the Québec *Charter of human rights and freedoms* as it restricted the ability of the operations supervisors to engage in meaningful collective bargaining with their employer.

The Administrative Labour Tribunal concluded the managerial exclusion unjustifiably infringed on freedom of association and thus violated the *Charter*. This decision was quashed by the Superior Court of Québec and then reinstated by the Court of Appeal of Québec.

The Supreme Court allowed the appeal and held the impugned provisions of the *Code* did not infringe the *Charter.* A majority of the Court also confirmed that the test to establish an infringement of section 2(d) of the *Charter* is the same, regardless of whether the *Charter* claim seeks to have the government engage in some form of positive intervention to promote or enable freedom of association, or whether the claim is designed to protect against state interference with this protected right. In either case, the Court will consider the following:

- Does the activity at issue fall within the freedom of association guarantee?
- If yes, does the government action substantially interfere with the protected activity (in purpose or in effect)?

In this case, a majority of the Court was satisfied the purpose of the managerial exclusion was not to interfere with managers' freedom of association. Rather, it was to:

- distinguish between management and operations in an organizational hierarchy
- avoid placing managers in a situation where a conflict of interest exists
- ensure an employer could be confident its managers would represent its interests

Further, the exclusion did not substantially interfere with the operations supervisors' right to collectively bargain, as the Association had previously negotiated working conditions for this group of employees directly with the Society.

Key Takeaways for Employers

This decision is helpful to employers across the country. It affirms the policy reasons behind why a manager is not to be treated as an "employee" for the purpose of labour legislation and that this distinction does not violate the *Charter*-protected right to freedom of association.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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