**Case Brief – British Columbia Teachers’ Federation v. British Columbia, 2014 BCSC 121**

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In a stunning rebuke to the British Columbia government, the BC Supreme Court found provincial legislation to be unconstitutional because it infringed teachers’ section 2(d) right to freedom of association.  The Court held that the legislation was invalid and ordered the Province to pay the British Columbia Teachers’ Federation $2 million in damages for breaching their Charter rights.

This case was a sequel to the BC Supreme Court’s judgment in 2011, in which it ruled that the Province had infringed teachers’ right to freedom of association by enacting legislation that interfered with their collective bargaining power (the “2011 Decision”). [1]  In 2011 the Court found that the legislation interfered with teachers’ section 2(d) *Charter* rights in two ways: (1) by voiding hundreds of terms of a collective agreement relating to class size and class composition conditions, and (2) by prohibiting collective bargaining on the same matters in the future.

After the 2011 Decision, the Province repealed the impugned legislation and then replaced it with new legislation that was substantially the same, except that the new legislation was time limited and would expire on June 30, 2014.  The question before the Court was whether the new legislation still violated the teachers’ Charter right to freedom of association.

One of the Province’s arguments was that the legislation was not unconstitutional because it had consulted with the teachers before enacting the legislation.  The Court rejected this argument, finding that the Province’s consultation could not ameliorate the legislative interference with the teachers’ right to freedom of association because it was not in good faith: the Province did not engage in meaningful dialogue, listen to the employees’ representations, avoid unnecessary delay, or make a reasonable effort to reach agreement.

The Province also argued that the time limit on the legislation saved it from unconstitutionality.  The Court rejected this argument as well.  It found that the temporal limitation did not change the fact that the legislation was unconstitutional.  The legislation was not justified under section 1 of the *Charter*.  The decision has been appealed and the BC Court of Appeal has granted a stay of the BC Supreme Court judgment until after its determination.

This case has an interesting significance in the Aboriginal context, since it raises the question of whether a First Nation or other Aboriginal group could be awarded damages for the legislative infringement of its section 35 rights.  The Supreme Court of Canada has confirmed that damages may be an appropriate remedy where the Crown violates a person’s *Charter* rights. [2] The *Rio Tinto* case suggests that a First Nation could be awarded damages for a Crown violation of Aboriginal or treaty rights.[3]

[1] *British Columbia Teachers’ Federation (Chudnosky) v. British Columbia*, 2011 BCSC 469

[2] *Vancouver (City) v. Ward*, 2010 SCC 27

[3*] Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43