

Case studies of Physician & Lawyer “Unionization”

LEGAL AID ONTARIO LAWYERS

ONTARIO MEDICAL ASSOCIATION

Doctors & Lawyer in Canadian Statutory Bargaining Regimes

Doctors and lawyers in Ontario explicitly excluded from the two relevant statutory collective bargaining regimes:

Crown Employees' Collective Bargaining Act:

Explicit exclusion of doctors and lawyers employed in a professional capacity.

OLRA:

Explicit exclusion of doctors and lawyers employed in a professional capacity.

Does not apply to Crown employees, so government lawyers and doctors employed by the Crown are excluded in any event.

In the mid-1990s, short-lived amendments to CECBA and OLRA removed these professional exclusions.

Crown Employees Collective Bargaining Act, 1993, S.O. 1993, c. 38 : s. 1.1(3)

This Act does not apply with respect to the following:

...

5. Lawyers employed in their professional capacity.

6. Physicians employed in their professional capacity.

...

Ontario Labour Relations Act, 1995, SO 1995, c 1, Sch A, s. 1(3):

... for the purposes of this Act, no person shall be deemed to be an employee,

(a) who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; or

....

Supreme Court of Canada & Charter s.2(d) Freedom of Association

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

...

(d) freedom of association

Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27

Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1

Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4

These cases establish:

- ❑ The process of collective bargaining is protected by s.2(d)
- ❑ Strikes are recognized as part of the process of collective bargaining, and thus protected by s.2(d)
- ❑ Test is: substantial interference with the guarantee of freedom of association
- ❑ S.1 “saving” applies, of course.

Charter Freedom of Association: the Collective Bargaining Context

The jurisprudence as a whole now unequivocally establishes that freedom of association under section 2(d) of the Charter in the labour context protects the right of employees:

- to establish, belong to and maintain a trade union;
- to join a trade union of their choosing that is independent from management;
- to engage in a meaningful process of collective bargaining, including the right to join together to pursue workplace goals, to make collective representations to the employer, and to have those representations considered in good faith, and to have a means of recourse should the employer not bargain in good faith; and
- to strike.

Legal Aid Ontario

LAO created via Legal Aid Services Act, 1998, SO 1998, c. 26.

LAO is a governmental body subject to the Charter

LAO staff lawyers “work in courthouses and offices across Ontario, providing legal advocacy and advice to low-income Ontarians in the fields of criminal, family and immigration/refugee law, or in some cases provide legal research and advice directly to LAO.”

Earlier efforts | 2006, 2009

2011 – LAO commenced four year organizing campaign.

- The Society of Energy Professionals
- Multifaceted campaign: public appeal, Charter challenge

Motivation: *LAO’s Lawyer Workforce Strategy*

September 2016: settled Charter litigation with a voluntary recognition agreement whereby:

- Agreed bargaining unit description
- Employee list
- OLRA ULP provisions will apply
- Board supervised vote on question of representation by Society of Energy Professionals
- If win vote; LAO agreed to bargain in good faith for framework agreement.
- Agree to refer this issue to arbitration under Arbitrations Act, 1991

Ontario Medical Association (OMA)

OMA: not-for profit corporation,
founded as voluntary association in
1880.

Exclusive representative of
physicians for negotiating
Physician Services Agreement
with government.

Statutory dues obligation

Membership includes: physicians
and students

Public health care system – physicians
cannot provide medical services
outside system.

2012 – *Charter* challenge – settled by
Representation Rights Agreement
lacking binding dispute resolution
mechanism

2014 – Conciliation report

2015 – Charter challenge

Series of unilateral government
reductions to physician fees

2016 – failed tentative Physician
Services Agreement – lacked binding
arbitration

OMA Executive resignation

2017 – Binding Arbitration Framework
– *Charter* challenge continues

2018 – Arbitration process initiated
and ongoing