

Philosophy 338
Philosophy of Law
2017
Note Twenty

This note is discretionary reading

SASKATCHEWAN FED. OF LABOUR V. SASKATCHEWAN 2015 SCC 4

In December, 2007, the newly elected Government of Saskatchewan introduced two statutes: *The Public Service Essential Services Act*, S. S. 2008, c. P-42.2 (*PSESA*), and *The Trade Union Amendment Act, 2008*, S. S. 2008, c. 26, which became law in May, 2008. The *PSESA* is Saskatchewan's first statutory scheme to limit the ability of essential service public sector employees to strike. It prohibits essential service employees from participating in *any* strike action against their employer. Essential-service employees are required to continue the duties of their employment in accordance with the terms and conditions of the last collective bargaining agreement.

The Trade Union Amendment Act, 2008 changes the union certification process by increasing the required level of written support and reducing the period for receiving written support from employees. It also changes the provisions dealing with communications between employers and their employees. In July 2008, the Saskatchewan Federation of Labour and other unions challenged the constitutionality of both the *PSESA* and *The Trade Union Amendment Act, 2008*. The trial judge concluded that the right to strike was a fundamental freedom protected by s.2 (d) of the *Canadian Charter of Rights and Freedoms* and that the prohibition on the right to strike in the *PSESA* substantially interfered with these 2 (d) rights of the affected public sector employees. He also found that the absolute ban on the right to strike in the *PSESA* was neither minimally impairing nor proportionate and therefore was not saved by s. 1 of the *Charter*. The declaration of invalidity was suspended for one year. On the other hand, the trial judge concluded that the changes to the certification process and permissible employer communications set out in *The Trade Union Amendment Act, 2008* did not breach s. 2 (d).

The Saskatchewan Court of Appeal unanimously allowed the Government of Saskatchewan's appeal with respect to the constitutionality of the *PSESA*. The appeal against the finding that *The Trade Union Amendment Act, 2008* did not violate s. 2 (d) of the *Charter* was dismissed.

Held (Rothstein and Wagner JJ. Dissenting in part): The appeal with respect to the *PSESA* should be allowed. The prohibition against strikes in the *PSESA* substantially interferes with a meaningful process of collective bargaining and therefore violates s. 2 (d) of the *Charter*. The infringement is not justified under s. 1. The declaration of invalidity is suspended for one year. The appeal with respect to *The Trade Union Amendment Act, 2008* is dismissed.

Complete reasons available at: *Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4*.