Supreme Court of Canada File No. 27216

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for the Province of Ontario)

BETWEEN:

TOM DUNMORE, SALAME ABDULHAMID
and WALTER LUMSDEN and MICHAEL DOYLE,
on their own behalf and on behalf of the
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

APPELLANTS

AND:

ATTORNEY GENERAL FOR THE PROVINCE OF ONTARIO,
HIGHLINE PRODUCE LIMITED, KINGSVILLE MUSHROOM FARM INC.
and FLEMING CHICKS

RESPONDENTS

AND:

LABOUR ISSUES COORDINATING COMMITTEE,
ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF QUÉBEC,
and CANADIAN LABOUR CONGRESS

INTERVENERS

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FACTUM OF THE INTERVENER LABOUR ISSUES COORDINATING COMMITTEE

PART I – STATEMENT OF FACTS

1. The Intervener, the Labour Issues Coordinating Committee (the "LICC"), repeats and relies upon the facts set out in the facta of the Respondents, the Attorney General of Ontario and Fleming Chicks, except as set out herein.

2. For the purposes of this factum, the following of those facts are of key importance:

a) In 1991, Ontario's government announced that it intended to introduce legislation granting agricultural[1] workers the right to bargain collectively and, possibly, the right to strike. The *status quo* was not an option being considered. The only input allowed to farmers was regarding how the legislation would be implemented. Rather than being willing participants or equal partners in a debate about whether a collective bargaining regime should be implemented, the farmers' only option was to attempt to advocate for such limitations to the legislation that the government would permit.

b) Even the 1992 Task Force on Agricultural Relations (the "1992 Task Force") and the former provincial government that implemented the *ALRA* recognized that there should be, at the very least, no right to strike given the "disastrous consequences" of work stoppages to Ontario's agricultural industry. They also recognized that dispute settlement through final offer arbitration, while adopted into the legislation, was ill suited to the "non-compensation" issues of a collective agreement.

c) As strikes and lockouts are unreasonable dispute settlement mechanisms in Ontario's agricultural industry, the only alternative to resolve collective bargaining disputes is compulsory arbitration. However, as described in the factum of the Attorney General for Ontario, compulsory arbitration, particularly final offer arbitration such as was adopted in the *ALRA*, raises labour costs beyond their market levels.

d) Ontario's farmers are simply unable to absorb this sort of increased cost. Profit margins are remarkably thin, if positive at all. Since the mid 1970's, real farm income has decreased dramatically, the rate of debt to income has more than quintupled, and farmers' average income is much less than that of farm workers. Given ever-increasing global competition and the withdrawal of government price support due to international trade agreements, Ontario's farmers are price-takers, so they cannot pass along any increase in their costs to consumers.

1 The word "agriculture" and its related terms shall be used herein to mean all of the varied agricultural and horticultural operations in Ontario. The word "farmers" shall mean those who own and operate agricultural operations.

e) The agricultural process is also totally unsuited to rigid collective bargaining structures and many traditional components of collective agreements. It is dependent on, and to a large extent at the mercy of, the biology of the living plants and animals it produces, disease and pests, and the vagaries of the weather. The aforementioned economic pressures also mean that there is no excess labour capacity available to deal with the regular emergencies stemming from any of these factors. Any reduction in the flexibility of the farm's workforce, whether family or non-family, will result in losses of product, with consequent economic losses to the farm and the possibility of failure.

f) Furthermore, farms are not just businesses; they are also homes. Farming remains a predominantly family enterprise and farm employees, whether family members or otherwise, are all part of the farm's family life. This "family dynamic" is unique to farming and would be dramatically impacted if commonplace aspects of collective bargaining and compulsory arbitration were imposed. The formality of the process and the division of management and labour inherent in collective bargaining, compulsory arbitration, and the results thereof, can only harm the "family dynamic" of the farm. Farm life would be irrevocably changed for farmers, their families, and agricultural workers.

g) Finally, prior to the *ALRA* and following its repeal, agricultural workers were not the only group excluded from the *LRA*. Deciding which groups are appropriately included or excluded from the effects of the legislation is the role and duty of the legislature. That decision involves a complex analysis and balance of economic and social factors, such as the economic and competitive realities faced by Ontario's farmers, the nature of the agricultural workforce and the agricultural process, the economic and social status of farmers and agricultural workers, the economic and social importance of agriculture to the province, and the social and family dynamics that exist on the vast majority of Ontario farms.

PART II – POINTS IN ISSUE

3. The points in issue are those set out in the constitutional questions stated by Binnie J. The LICC's position on those issues is that neither s. 80 of the *LRESLAA* nor s. 3(b) of the *LRA* limit the right of agricultural workers to freedom of association guaranteed by s. 2(d) of the *Charter*, nor do they limit the right of agricultural workers to equality before and under the law and equal benefit of the law without discrimination as guaranteed by s. 15(1) of the *Charter*. If the LICC is wrong on those issues, its position is that any such limitation of either right is justified under s. 1 of the *Charter*.

PART III – ARGUMENT

A. No infringement of s. 2(d) of the *Charter*

4. S. 2(d) of the *Charter* guarantees freedom of association to individuals in Canadian society and that freedom was not infringed by the repeal of the *ALRA* (through the enactment of s. 80 of the *LRESLAA*), nor is it infringed by s. 3(b) of the *LRA*. Ontario's agricultural workers remain free, as they have always been, to associate as they see fit.

5. The repeal of the *ALRA* simply withdrew a collective bargaining system for the agricultural industry implemented less than 17 months earlier by a former provincial government. S. 2(d) of the *Charter* does not guarantee the implementation of the *ALRA*'s collective bargaining system, nor any other collective bargaining system, whether in the agricultural industry or otherwise.

> ***Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989 at 1012-1019. ("*Delisle*")**
>
> ***Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367 at 391-394 and 401-404. ("*PIPS*")**
>
> ***Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at 390-92, 395-99 and 409-16. ("*Alberta Reference*")**
>
> ***PSAC v. Canada*, [1987] 1 S.C.R. 424 at 452-453. ("*PSAC*")**
>
> ***RWDSU v. Saskatchewan*, [1987] 1 S.C.R. 460 at 475-478, 484-485. ("*RWDSU*")**

6. Collective bargaining, or a collective bargaining system, may be the goal of an association when it is formed. However, the formation of an association is not prevented or impeded because it is not allowed to bargain collectively once formed, nor is it prevented or impeded by the absence or existence of a particular collective bargaining system.

7. In fact, this Honourable Court has held that s. 2(d) does not guarantee collective bargaining, a particular system of collective bargaining, nor any particular goal or objective of any association. What is protected is the collective exercise of constitutional or legal rights of individuals. If s. 2(d) was interpreted to provide protection to a particular collective goal simply because it is being carried out in association, it would mean associations could be accorded rights that individuals were not, simply by virtue of the association. This cannot be correct. One of the purposes of the *Charter* is to prevent the imposition of collective desires (through government action) upon the constitutional rights of the individual.

PIPS, ibid.

***Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at 230-232.**

8. S. 2 of the *Charter* guarantees that certain fundamental freedoms shall not be violated, not that those freedoms shall be promoted. This means that Ontario's government cannot infringe upon agricultural workers' freedom to associate as they choose, but it does not require the government to enhance, promote or encourage association or to implement legislated systems which would make it more likely or easier for agricultural workers to associate. Absent exceptional circumstances not present in this case, s. 2 guarantees are prescriptive only.

Delisle, ibid.

9. The Appellants submit that both the purpose and result of the repeal of the *ALRA* is to effectively ban unionization. Neither proposition is correct. The purpose and effect of the *ALRA*'s repeal was the repeal of the system of collective bargaining and dispute resolution that the previous provincial government had created. The Appellants' concern is not whether they are able to form an

association, but whether they are provided with a legislated regime that assists in the pursuit of their collective goals and objectives.

10. At best, the Appellants seek to restore a system that provides special rights that help recruit members to their association, such as mandated access to private property. In other words, they seek a system that assists in the enhancement, promotion and encouragement of their association and the activities of their association. There is no doubt that access to the regime of the *LRA* would have such an effect. However, excluding a group from legislation that enhances a s. 2 freedom does not stifle that group's freedom. It simply facilitates and enhances the freedom of others.

> ***Native Women's Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627 at 654. ("*Native Women's Assn*")**
>
> ***Delisle, supra*, at para 28.**

11. Nor does the simple exclusion of a particular job class from a legislated collective bargaining regime mean that class cannot or will not form an association, whether in the form of a trade union or otherwise. Employee associations can provide a number of services to their members even if they do not bargain collectively on the members' behalf. Such services may include obtaining preferential group insurance rates, lobbying of governments, promoting improvements to wages and working conditions or improvements in health and safety, developing job training and job creation programs, and educating the membership through articles, pamphlets, seminars or conferences.

12. Examples of associations that provide some of those sorts of services or that otherwise "advance the cause" of employees, either directly or indirectly, include the City of Toronto Administrative Professional and Supervisory Association Inc., the Canadian Bar Association–Young Lawyers Division (law firm associates), and the Intervener, the Canadian Labour Congress ("CLC"). The New Democratic Party might also be seen in a similar light. There is nothing in the *LRESLAA* or the *LRA* that would prevent agricultural workers from forming or joining that sort of association, nor does the legislation prevent agricultural workers from joining an established union to obtain similar services. The impugned legislation has also not prevented this matter from proceeding to the highest court in Canada on behalf of a particular group of agricultural workers.

13. Even if s. 2(d) does not guarantee a right to collective bargaining, agricultural workers, like every employee, can still negotiate their terms of employment. While those terms may be set unilaterally by the farmer in many circumstances, there is still a "system" of bargaining that is purely contractual and based on the market for labour: there is an offer of employment on particular terms, further negotiations may or may not take place, and the terms are either accepted or not. Nothing prevents attempts at negotiation on an individual or collective basis, if the parties are willing. The *ALRA* simply imposed a particular collective bargaining and dispute resolution regime on farmers if their employees decided to join a trade union. There is nothing in its repealing legislation that prevents the parties from negotiating terms of employment on a collective basis. Whether or not it is likely that farmers will agree to do so is irrelevant to a *Charter* analysis.

14. In the alternative, even if this freedom of contract were not available, there would be no *Charter* violation. As noted above, bargaining for working conditions is not a constitutional freedom of individuals. If it is not an individual freedom, it cannot be a collective freedom.

> ***Supra*, paras 6-7.**

15. Finally, the *Charter* does not apply to private action. Employer activities to convince employees that unionization is unnecessary therefore cannot offend s. 2(d). Furthermore, even the *LRA* does not create an outright ban on such employer activities. Prohibitions under that Act are limited to conduct which constitutes an "unfair practice".

> ***Symes v. Canada*, [1993] 4 S.C.R. 695 at 764-765. ("*Symes*")**
>
> ***McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 at 261-263 and 318. ("*McKinney*")**
>
> ***Labour Relations Act, 1995*, S.O. 1995, c.1, Sched. A, as am., paras 70-88.**

B. No infringement of s. 15(1) of the *Charter*

16. There is no argument that agricultural workers are treated differently because they are excluded from the collective bargaining regime of the *LRA*. Such a distinction, however, does not

constitute "discrimination" unless it is based upon the grounds enumerated in s. 15(1) or grounds analogous thereto.

> ***Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 182. ("*Andrews*")**
>
> ***Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at 217-220 and 250-254. ("*Corbiere*")**

17. What may constitute "analogous grounds" is not fixed but they must, by definition, be analogous to the grounds enumerated in s. 15(1). Given the nature of the enumerated grounds, other grounds for differentiation are most likely to be analogous if they are "personal", "innate", "immutable" or only changeable at unacceptable personal cost, "irrelevant", or are unconnected to the "merit" or "capacity" of the individual.

> ***Corbiere , ibid*.**
>
> ***Andrews, supra*, at 174-175. ("*Andrews*")**
>
> ***Delisle, supra*, at 1022-1025.**

18. The exclusion of agricultural workers from the system of collective bargaining created under the *LRA*, or from any legislated collective bargaining system, is not based upon "personal", "innate", or "immutable" grounds. The only ground that applies is the occupation of "agricultural worker", and "occupation" is not a ground of discrimination enumerated in s. 15(1), nor is it analogous. It is not unconstitutional for governments to treat individuals or groups differently on the basis of the jobs they hold.

> ***Delisle, ibid*.**
>
> ***Cosyns v. Canada (Attorney General)* (1992), 7 O.R. (3d) 641 (Div. Ct.) at 658.**
>
> ***Haddock v. Ontario (Attorney General)* (1990), 73 O.R. (2d) 545 (H.C.) at 564.**
>
> ***A & L Investments Ltd. v. Ontario* (1993), 13 O.R. (3d) 799 (Gen. Div.) at 821-822; aff'd (1997), 36 O.R. (3d) 127 (C.A.), leave to appeal to SCC denied (March 19, 1998). ("*A & L Investments*")**
>
> ***Ontario Public Service Employees Union v. National Citizens' Coalition Inc.* (1990), 74 O.R. (2d) 260 (C.A.) at 265-266.**

***Lister v. Ontario (Attorney-General)* (1990), 72 O.R. (2d) 354 (H.C.) at 366-367.**

19. For example, governments can pay crown attorneys more than articling students, because that distinction is based upon the economic value placed upon the respective occupations by the government and by the market for those services. Such a distinction does not necessarily mean that the crown attorneys work harder than the articling students, but it does reflect the economic value placed upon a crown attorney's product, skills, knowledge and experience; i.e., the crown attorney's "merit" and "capacity". It has nothing to do with any "personal", "innate", or "immutable" characteristics of either individual. In the same way, excluding agricultural workers from a collective bargaining regime solely on the basis of their job does not violate s. 15(1).

***Corbiere, ibid*.**

20. As noted by Sharpe J. (as he then was), agricultural workers are a "disparate and heterogeneous group". There are no "personal", "innate", or "immutable" characteristics common to the entire group. While there are undoubtedly some such characteristics in common between certain members of the group, there are none common to all, nor is there any evidence that any such characteristics were the basis for the government's decision to exclude them from a system of collective bargaining.

***Dunmore v. Ontario (Attorney General)* (1997), 155 D.L.R. (4th) 193 (Ont. Gen. Div.) at 215-219.**

21. The exclusion of agricultural workers was based upon the unique nature and realities of the agricultural industry. The impact of a legislated system of collective bargaining in the agricultural industry was determined by Ontario's legislature to be unacceptable. It is the role of government to make such determinations. Governments are elected to implement, revise or remove legislated structures and systems under which society operates. For the purposes of s. 15(1), the only requirement is that they do so on the basis of reasons other than the enumerated or analogous grounds of discrimination. It is not the proper role of the courts to review all legislative distinctions or classifications, as they are an inherent part of the process of government.

***Corbiere, supra*, at 218-219.**

***Andrews, supra,* at 168 and 194.**

***A & L Investments, supra*, at 821.**

22. Further, the analysis of whether discrimination has occurred under s. 15(1) must be relative to the *status quo* in the absence of government interference. As there is no constitutional right to collective bargaining, as noted above, in the absence of government interference, agricultural workers and farmers are not required to bargain collectively. If the Appellants are successful on this appeal, however, a system of collective bargaining will be re-imposed, to the benefit of agricultural workers and the corresponding detriment of farmers.

23. The Appellants' ground for such a ruling is the alleged disadvantage of agricultural workers. However, if such disadvantage is held to constitute an analogous ground of discrimination for the purposes of s. 15(1) of the *Charter*, then farmers suffer similar disadvantage, and for the same reasons; i.e., the nature of their occupation and the economic realties of the agricultural industry. Like agricultural workers, farmers suffer from low (and, in fact, decreasing) incomes, low education on average (perhaps lower than agricultural workers), and low status and prestige.

24. It must be remembered that farmers *are* agricultural workers. The only difference is that they also own the workplace. However, it is clear from the Record that farm ownership does not preclude economic disadvantage. To the contrary, farm debt is increasing, meaning farmers in fact own progressively less and less of their farms. This is the result of the decrease in farmers' real income, which in turn is the result of lower prices for product, an inability to pass increased costs to consumers, and increased global competition. The lot of Ontario's farmers is getting worse, not better.

25. In determining the existence of any alleged discrimination then, it is also necessary to consider the relative disadvantage of farmers. The principle of equality in s. 15(1) cannot mean that, where there are two competing disadvantaged groups, the lot of one group should be improved by according

it legislated benefits to the detriment of the other group. To do so itself constitutes discrimination against the second group.

***Andrews, supra,* at 163-171.**

26. As the source of any improvement to agricultural workers from collective bargaining can only come from higher wages or improved working conditions (with their own costs), any such improvement would necessarily be at the expense of the farmers. Equality can never be achieved if one disadvantaged group is raised up while another is pushed farther down.

***Corbiere, supra,* at 223-224.**

C. Any infringement of s. 2(d) or s. 15(1) is justified under s. 1 of the *Charter*

27. As noted above, the objective of the repeal of the *ALRA* and the exclusion of agricultural workers from the collective bargaining regime of the *LRA* was to protect the economic viability and family dynamic of Ontario's farms. The objective cannot have been, as the Appellants contend, to prevent unionization. Again, the legislation does not prevent agricultural workers from forming or joining unions, nor does it prevent unions from providing services and benefits to agricultural workers other than collective bargaining.

***Supra*, para 9 and 11-12.**

28. Admittedly, a traditional role of trade unions is to bargain collectively and engage in dispute resolution on behalf of their members (generally, through strike action and other pressure tactics) to secure concessions from employers if such actions and tactics are permissible under the governing legislated system. However, it is precisely this traditional role which provides the context to any reference to "unionization" by the government when determining the "purpose" of the impugned legislation.

29. Furthermore, Ontario's farms are at economic risk even without the systems implemented by the *ALRA*. Professor Brinkman accurately sets out many of the conditions faced by Ontario farmers that make the agricultural industry unique and particularly ill suited to traditional collective bargaining and labour relations. He correctly cites a combination of biological production processes, family farm business and personal interaction, and extreme financial vulnerability as the primary causes of this uniqueness and unsuitability.

Affidavit of George Brinkman, *Appellants' Record*, Vol. II, pp 284-285

30. Farming has always been, and will continue to be, dependent upon and subject to the biology of the crops and livestock it produces and the unpredictability of nature. Common though inherently unpredictable events such as an unseasonably cold night or excessive rainfall can wreak havoc on an entire seasons' yield in any number of crops and makes flexibility in the workforce an absolute necessity. It may be less than an hour before the entire crop becomes worthless.

31. In those circumstances, all farm employees (the farmer, the family and any hired employees) must be ready to abandon all other work and put in whatever hours are necessary to save the crop. If they do not, farmers will lose their investment in the capital and labour necessary to purchase, plant/birth, monitor and nurture the crop or livestock to the point that it begins to bear or become marketable product.

32. Pest or parasite infestation, disease, blight and inclement weather are all factors beyond the control of farmers and require virtually instantaneous reaction. For example, while pest levels can be proactively controlled through the use of pesticides to a certain extent, environmental considerations and regulations prevent farmers from eliminating all threats. Further, there may be infestations of new kinds of pests that were previously unexpected or that develop immunities to the pesticides currently in use. Farmers must therefore monitor their products constantly, through all the years of their growth, and must react immediately to any new infestation.

33. The fact that there are more employees on larger farms does not reduce the need for fluidity in the timing and nature of the jobs they perform. A larger farm simply has more crops or livestock to lose than a small one, as well as greater territory to cover and more work to be done. The reaction to a threat such as frost during the harvest must still be immediate and must involve every member of the farm; farmer, family and employee.

34. In recent years Ontario farmers have also had to contend with international trade agreements which have led to unprecedented levels of competition. Under these agreements, supply has massively outstripped demand in the markets for Ontario's goods. For example, competition comes from every continent except Antarctica, whether it is from California, Italy, Australia, South Africa or Chile.

35. All of this leaves Ontario's farmers completely powerless with respect to the prices they are able to obtain for their product. Any increase in the operational costs of farming resulting from collective bargaining would add to the already severe economic pressure on Ontario's farmers.

36. The simple fact that a farm may have a high asset value does not make it financially sound or able to withstand the additional costs that collective bargaining and collective agreements would impose. Even relatively large family farms with valuable assets such as land, buildings and large mechanical equipment are financed through a number of levels of debt. Therefore, the ability of many farmers to bear direct and indirect increases in costs through additional debt financing is negligible. For example, it may be years until an orchard grows to where it can bear marketable fruit. Until that time, the farmer is dependant upon debt financing to do things like maintain the home, make payments on the farm's equipment and obtain the pesticides, fertilizer and labour required to care for the rest of the fields. When the farm's assets are subject to a number of mortgages or other security instruments, it is already difficult for farmers to convince financial institutions to lend additional funds to finance new crops that do not provide an immediate return. Add in the costs, uncertainty and additional risks of labour difficulties due to strict collective bargaining principles or collective agreement provisions imposed at arbitration, and the prospect of obtaining the necessary financing becomes even bleaker.

37. Beyond the economic factors, farms are not just places of business, they are the family home as well. While other owners and employees may take their work home, for farmers, work *is* home.

38. The "family dynamic" is not a sociological description or phenomenon to Ontario's farmers, it is a way of life. Family members are the stakeholders in the farm and they make business decisions as a family unit, at home and often before or after everyone has spent extremely long days working in the fields. The "workplace" is the backyard where the children play and the property upon which their houses are built. In this atmosphere, while farmers may have dozens of employees working with them, particularly during the summer months, the line between work and home becomes virtually impossible to define. These employees interact with the family on a daily basis as integral parts of family life. The differences between this environment and that of a manufacturing plant are evident, essential and profoundly important to Ontario farmers and the operation of Ontario's farms.

39. The nature of farming also makes its financial vulnerability an immensely personal issue. Each crop is the result of an investment in the time and effort of the farmer, the family and any farm employees, as well as the investment of money borrowed on the collateral of the family home and land. Slim margins mean that the product of each orchard, field or animal must be successfully brought to market or the farmer risks losing not just "business profits" but the family's income and, in the worst circumstances, the family home. Imposing strict institutional mechanisms such as defined grievance procedures, job classifications or strict hours of work prohibits this essential flexibility, thereby putting the farm's economic viability at risk and potentially threatening the family home.

40. While the *ALRA* expressly permitted family members to perform any work for the farmer, it did not exempt family members from being included in a bargaining unit. In many circumstances there will be family employees that would not qualify as "management" and would consequently be encompassed by a bargaining unit for the purposes of collective bargaining. The potential for acrimony within families and conflicts within bargaining units is obvious if family members are subject to participation in collective bargaining, grievance procedures and possible arbitration proceedings against their parent, child, sibling or spouse.

41. The potential for conflict exists even for employees that are not family members. Given the family-oriented nature of the farm and of farming itself, employees effectively become part of the farm's "extended family". Given that the farm is also a home, there must be a relationship of trust between the family and those that live and work on the farm. That relationship would be immeasurably harder to develop and maintain if its structure were changed from an "extended family" to one of "employer and bargaining unit".

42. In performing an analysis under s.1 of the *Charter*, constitutional issues must be assessed by reference to social and economic factors. The vulnerability of Ontario's farms and the apprehension of farmers whose lives and livelihood would suffer from the imposition of collective bargaining are relevant factors in this analysis. The deference to be accorded to the Ontario legislature varies with this same social and economic context. In this case, that context suggests considerable deference should be accorded to the legislature's decision to repeal the *ALRA*.

> ***RWDSU, supra*, at 475-478, 480.**
>
> ***PSAC, supra*, at 442.**

43. While the courts are specialists in the protection of liberty and the interpretation of legislation, it is the legislature that must mediate between competing social interests. The legislation that repealed the *ALRA* was economic and social in nature and a greater degree of deference to the Ontario legislature's decision to enact such legislation should therefore be accorded.

> ***Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 989-94. ("*Irwin Toy*")**
>
> ***RJR.-MacDonald Inc. v. Canada(Attorney General)*, [1995] 3 S.C.R. 199 at para 68-70. ("*RJR MacDonald*")**

44. Furthermore, where there are two competing disadvantaged groups, as in this case, deference should be accorded to the decision of the legislature as to the proper distribution of benefits in society. If the legislature has made a reasonable assessment as to where the line is most properly drawn, it is not for the court to second guess. Attempts to protect the rights of one group will inevitably impose burdens on the rights of other groups. There is no perfect scenario in which the

rights of all can be equally protected, and it is the role of the legislature to determine the appropriate balance.

***Andrews, supra,* at 185-186.**

***Irwin Toy, ibid*.**

***McKinney, supra*, at 285-300, 304-305 and 315-317.**

45. In addition, the rights accorded to the Appellants by the *ALRA* did not go to the "core" of either of the freedom of association under s. 2(d) or the right to equality under s.15(1) of the *Charter*. They were economic rights to a particular regime of collective bargaining and dispute resolution. As such, even further deference should be accorded to the legislature's repeal of the *ALRA*. There is a delicate balance to be struck between an individual employee's alleged right to collectively bargain and Ontario's need to protect its farms.

***Irwin Toy, ibid*.**

46. There is clearly a rational connection between the repeal of the *ALRA* and the pressing and substantial objective of protecting the family dynamic and viability of all of Ontario's farms. In any event, there was at the very least a reasonable basis for the Ontario legislature to believe that such a connection existed. The *ALRA* raised matters which Ontario's government was legitimately concerned to remedy and there was an obvious connection between dealing with that concern and the repeal of the *ALRA*.

47. The legislation in question represents a reasonable and proportional impairment of the alleged rights of the Appellants, notwithstanding that the *ALRA* was repealed. Ontario's farmers have been and continue to be a vulnerable group, one which is equally vulnerable to farm workers on the economic basis which is the primary distinguishing factor that binds otherwise diverse and heterogeneous employees. There was a reasoned apprehension of harm to Ontario's farms, which required that the *ALRA* be repealed. That harm would have been widespread, as the *ALRA* applied to the entire Ontario farming community.

48. The policy behind the *ALRA* was ill conceived, its system of collective bargaining and dispute resolution was unworkable, and the collective agreements that would have been imposed by the dispute resolution mechanism of that system are unsustainable in Ontario's agricultural context. The realities under which Ontario farms operate cannot accommodate the restrictions and inflexibility inherent in that system or in the more onerous system of the *LRA*. Any argument by the Appellants that the effective reinstatement of the *ALRA* or the striking down of the exclusion of agricultural workers from the *LRA* would not have a devastating impact upon Ontario's agricultural industry as a whole is inaccurate and erroneous.

PART IV – ORDER DESIRED

49. The LICC submits that this appeal should be dismissed in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 5, 2001

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John C. Murray

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Jonathan L. Dye

Heenan Blaikie
Counsel for the Intervener
Labour Issues Coordinating Committee

PART V – TABLE OF AUTHORITIES

1. *A & L Investments Ltd. v. Ontario* (1993), 13 O.R. (3d) 799 (Gen. Div.); aff'd (1997), 36 O.R. (3d) 127 (C.A.), leave to appeal to SCC denied (March 19, 1998).
2. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.
3. *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157.
4. *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203.
5. *Cosyns v. Canada (Attorney General)* (1992), 7 O.R. (3d) 641 (Div. Ct.).
6. *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989.
7. *Dunmore v. Ontario (Attorney General)* (1997), 155 D.L.R. (4th) 193 (Ont. Gen. Div.).
8. *Haddock v. Ontario (Attorney General)* (1990), 73 O.R. (2d) 545 (H.C.).
9. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927.
10. *Lister v. Ontario (Attorney-General)* (1990), 72 O.R. (2d) 354 (H.C.).
11. *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229.
12. *Native Women's Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627.
13. *Ontario Public Service Employees Union v. National Citizens' Coalition Inc.* (1990), 74 O.R. (2d) 260 (C.A.).
14. *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367.
15. *PSAC v. Canada*, [1987] 1 S.C.R. 424.
16. *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313.
17. *RJR.-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199.
18. *RWDSU v. Saskatchewan*, [1987] 1 S.C.R. 460.
19. *Symes v. Canada*, [1993] 4 S.C.R. 695.

Appendix

Legislative Documents

1. *Labour Relations Act, 1995*, S.O. 1995, c.1, Sched. A, as am..

Supreme Court of Canada File No. 27216

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for the Province of Ontario)

BETWEEN:

TOM DUNMORE, SALAME ABDULHAMID and WALTER LUMSDEN AND MICHAEL DOYLE, on their own behalf and on behalf of the UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

APPELLANTS

AND:

ATTORNEY GENERAL FOR THE PROVINCE OF ONTARIO, HIGHLINE PRODUCE LIMITED, KINGSVILLE MUSHROOM FARM INC. and FLEMING CHICKS

RESPONDENTS

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