Wage Freeze Legislation

Section 2(d) of the Canadian Charter of Rights and Freedoms entrenches the freedom of association in the Canadian Constitution, upon which the right for Canadian workers to organize and seek membership with labour unions is built. However, this is not an absolute protection of workers' right to engage in the collective bargaining process, and there have been numerous incidents of employers testing the boundaries of this right, necessitating legal processes to clearly define the limitation of employers. In March 2016, the Pallister government in Manitoba introduced Bill 28, the Public Service Sustainability Act. While a government in power should be able to introduce legislation for debate and voting in the Legislative Assembly, including legislation that will impose wage freezes on unionized workers without negotiations, labour unions and the taxpayers will shoulder the cost of the resulting appeal process, as well as the uncertainty of the outcome. This begs the question of the actual purpose behind Bill 28, and its intended impact to limit collective bargaining rights of labour unions representing public employees. When a worker's employer is a government that has the power to introduce legislation that can limit collective bargaining, it is up to the Canadian Justice System to check that power when it is wielded inappropriately.

The Public Service Sustainability Act applies to anyone who works for the province of Manitoba, government agencies, health organizations, Child and Family Services, school divisions, public universities, and members of the legislature. The Act imposes wage freezes on 110,000 workers across the public sector of Manitoba, by creating a two-year wage freeze when collective agreements expire, followed by increases of 0.75% and 1%

in the third and forth years. While the negative impact on the lives of the workers and families of public servants is at the very core of this Act, there are also far-reaching consequences, which have the potential to influence the collective bargaining rights of labour unions and their workers not just in the province of Manitoba, but across the country. Attempts of provincial governments to limit the scope of collective bargaining rights is not unprecedented, and has been challenged in the Supreme Court of Canada. Specifically, Section 2(d) of the Charter has been interpreted by the Supreme Court of Canada in *Saskatchewan Federation of Labour v Saskatchewan*, [2015] 1 SCR 245 for the rights of unions to collectively bargain with their employers, in regards to the right to strike. Other Supreme Court rulings have said that the government has some power to circumvent contract talks and impose wages, but only if they first make serious attempts at negotiating. The Pallister government's legislation does not include any room for the negotiation of wages.

Manitoba's public sector unions have begun the process of challenging the Public Service Sustainability Act in court, as of July 2017, arguing that the Act is unconstitutional due to infringing collective bargaining rights. As it progresses through the levels of court, the contract negotiations of the public sector workers are being eroded. Kevin Rebeck, the president of the Manitoba Federation of Labour has reported that in recent months, employers have refused to discuss any wage increases in collective bargaining talks, evidence of the limitations to collective bargaining already being felt by public employees in Manitoba.

It is in the nature of employers to test the bounds of the collective bargaining process. When that employer is a government with the power to change the law, it is up to the Justice System to check that power. Complicating this legal test is the Living Tree Doctrine which says that the Canadian Constitution is organic and must be read in a progressive manner to adapt to changing, contemporary times. This opens up interpretations of Section 2(d) of the Charter to judicial activism and discretion. The political views in the sitting justices of all levels of court, but especially the Supreme Court, can impact rulings and resulting case law. Whichever decision the courts make will become precedent, and able to be used by future governments to limit bargaining or by future unions to protect their positions. No other unions have the power to change the law. And yet, the justice system exists to clarify and limit the power of this government/employer. The standard of living of the workers, and their right to freedom of association, collective bargaining, negotiation, and union protection hangs in the balance. The question may not be whether the Pallister government should be able to pass such legislation, but rather ought they?