GAGGINO
AVOCATS

February 19, 2018

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Ms. Kaylee Langille, Case Management Officer Federal Public
Sector Labour Relations and Employment Board
PO Box 1525, Station B
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OBJECT: Quebec Mounted Police Members' Association Inc., National Police Federation and Treasury Board and Treasury Board
Submission from the Quebec Mounted Police Members' Association Inc.
Reference N^{os}: 542-02-12 and 542-02-13

Madam,

Please find attached the arguments of the Quebec Mounted Police Members' Association (QMPMA) in reply to the responses of the Treasury Board of Canada and the National Police Federation (NPF).

We hope everything is in order and we ask you to accept, Madam, our best regards.

Marco Gaggino
MG / ap

encl. Arguments of the QMPMA
List of Authorities, 2 volumes

cc Mr. Christopher Rootham
Mr. Drew Heavens
Mr. Richard Fader
Mr. Sean Kelly
Mrs. Robin Benson
Mr. John White
Ms. Isabelle Roy
Mr. Patrick Mehain
Mr. Rae Banwarie
Mr. Louis Philipe Theriault
Mr. Gabriel Somjen Mr. Gavin Leeb

Files: 542-02-12 and 13

BEFORE:

FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD

Regarding an application for certification under section 54 of the *Federal Public Sector Labour Relations Act*

BETWEEN:

NATIONAL POLICE FEDERATION

(“applicant “)-and-

TREASURY BOARD OF CANADA

-and-
(“Defendant ")
QUEBEC MOUNTED POLICE MEMBERS ASSOCIATION

-and-

CANADIAN POLICE ASSOCIATION

("intervenors")

ARGUMENTS OF QUEBEC MOUNTED POLICE MEMBERS ASSOCIATION IN REPLY TO THE RESPONSES OF TREASURY BOARD OF CANADA AND NATIONAL POLICE FEDERATION

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1. On December 20, 2017, the Quebec Mounted Police Members' Association (hereinafter "**QMPMA**") submitted to the Federal Public Sector Labour Relations and Employment Board (hereinafter "**the Board**") an application to determine the constitutional validity of section 238.14 of the *Federal Public Sector Labour Relations Act* [1](hereinafter the "**PSLRA**");

2. The purpose of this application is to ensure that members of QMPMA can exercise their right to join the association of their choice in accordance with the *Canadian Charter of Rights and Liberties*[2] (hereinafter the "**Charter**");

3. Before addressing this issue in substance, QMPMA asked the Board to establish a timetable for its resolution as soon as possible;

4. In particular, QMPMA asked the Board to hold a pre-hearing conference to determine the time required to resolve the preliminary issues and to send an opinion to the Attorney General of Canada and those of the provinces under section 57 of the Act. *Federal Courts Act*[3] ;

5. On January 4 and February 2, 2018, the National Police Federation (hereinafter the "**NPF**") and the Treasury Board of Canada (hereinafter "**Employer**") submitted their arguments with respect to QMPMA's application;

6. This is QMPMA's reply to the arguments raised by the NPF and the Employer that can be summarized by the following questions:

   A. Is the constitutional question forclosed?

   B. Should the Board reconsider the decision of October 11, 2017, if QMPMA asks for its reconsideration?

   C. Should the Board suspend proceedings as long as the constitutional question is not decided?

A. Is the constitutional question forclosed?

7. QMPMA submits to the Board that this question must be answered in the negative, given the reasons provided below;

i) The Board has a duty to decide the constitutional question

8. First, the constitutional issue relating to the right of association that has already been alleged before the Board during the proceedings is at the heart of the debate concerning the two applications for accreditation;

9. The Board is an administrative tribunal with the power to decide questions of law

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[1] L.C. 2003, ch. 22, art. 2.

[2] *Canadian Charter of Rights and Freedoms* (in Canada Act, 1982 (RSC 1985, App. II, No. 44, Appendix B, Part I)).

[3] RSC 1985, c. F-7.

and has jurisdiction to apply the Charter;

10. In the judgment *Conway,* the Supreme Court reaffirmed what it said in the judgment *Okwuobi:*

> "[77] These judgments confirm that the administrative tribunal has the power to decide questions of law and for which the competence to apply the Charter is not clearly excluded **has the matching power - and the duty - to review and apply the Constitution, including the Charter, to decide on these legal issues.** (...)"[4];

11. According to the judgment *SEPB* v. *ASEPS* of the Quebec Court of Appeal, the failure of an administrative labour tribunal to deal with the question of freedom of association, when raised, gives rise to an application for a judicial review[5];

12. The authors R. MacAulay and J. Sprague in the book "*Practice and Procedure Before Administrative Tribunals"* suggest that it is in the public interest for administrative tribunals to decide the constitutional issues before them:

> « If a provision of its statute is challenged on constitutional grounds in proceedings before an administrative agency, there are a number of alternative ways in which the agency may deal with the matter:
>
> (...)
>
> 2. The proper action is to hear the constitutional issue, even if raised internally, but notice should be given to the parties by the agency. 1 have pointed out above, that **I believe that the public interest requires that the agency hear and deal with the issue,** but even when the agency has some doubt about the authority of the agency to make legal findings, it ought to deal with the issue and let the constitutional finding be reversed or confirmed on judicial review or appeal.
>
> The Supreme Court has made it clear in the *Doug/as/Kwantlen* case that the Court is advantaged by hearing from the agency in its reasons and this sense of public duty ought to be stressed. In fact, the courts have frequently emphasized the need for a factual record against which a constitutional issue can be determined. **The agency has a public duty to provide that record.** However, an agency retains its control over the hearing procedure and may, if it feels it appropriate to do so, hear the constitutional issue and reserve jurisdiction pending the completion of the rest of the proceedings or delay hearing the

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[4] *Okwuobi* v. *Lester School Board-8.-Pearson; Casimir* c. *Quebec (Attorney General); Zorrilla* c. *Quebec (Attorney General),* [2005] 1 SCR 257, 2005 SCC 16. (No. 10 in NPF's List of Authorities); *R.* v. *Conway,* [201O] 1 SCR 765, 2010 SCC 22, at para. 77; Mr. LISTON,
" *Administering the Charter, Proportioning Justice: Thirty-Five Years of Development in a Nutshell* " 30 Can. J. Admin. L. & Prac. 211, 2017, p. 11.

[5] *Union of Professional and Clerical Employees, Local 574 (SEPB) CTC-FTQ* c. *Trade Union Association of Production and Service Employees (ASEPS),* 2017 QCCA 737, para. 158.

> constitutional issues until after the balance of the proceedings has been heard. In fact, given the importance of the factual backdrop to any constitutional issue the latter may be the wisest choice. It may be that other decisions or developments in the proceedings will make it unnecessary to decide the constitutional issue in the end(...) »[6];
>
> [references omitted]

13. For this purpose, in the context of this certification case, the Board has the power and even the duty to apply the Charter and to decide the issues that are raised with respect to it;

ii. The fragmentation of judicial proceedings is to be avoided

14. Secondly, the NPF response implies that QMPMA has other means to challenge the constitutional validity of the provisions of the LRTSPF, in particular, before a Superior Court or the Federal Court;

15. However, it appears from the doctrine and case law that when these courts are seized of constitutional issues, they will generally decline jurisdiction to allow the administrative court hearing the case to rule on the constitutional question[7];

16. To that end, the administrative tribunal hearing a constitutional question is the most appropriate forum capable of granting just and proper relief:

17. It follows, therefore, that the parties must exhaust their appeals before the administrative tribunal to avoid fragmentation of the judicial proceedings, especially when the administrative process is not completed;

18. The Supreme Court emphasized this principle in Conway above noted:

> "For more than two decades, case law has confirmed the practical advantages and constitutional foundation of the solution of enabling Canadians to assert their rights and freedoms under the Charter in the court that is most readily available to them. without them having to fragment their appeal and seize both a superior court and an administrative tribunal (Douglas College, at pp. 603-604, Weber, at para.60; Cooper, para. 70; Martin, para. 29). As justice Lamer notes in Mills, preventing the plaintiff from obtaining prompt relief equals to deny him a proper and just remedy (891). **And the plan which favors the division of remedies is incompatible with the well-established principle that an administrative tribunal rules on all matters, including those of a constitutional nature whose essentially factual character falls within the specialized competence conferred to it by law.** (...)"[8];

19. This principle is also exposed by the authors R. MacAulay and J. Sprague in the

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[6] R. MACAULAY and J. SPRAGUE, " *Practice and Procedure Before Administrative Tribunals,* Toronto, Carswell, Vol. 3, pp. 23-71 - 28-73.

[7] H. BRUN, G. TREMBLAY, " *Droit constitutionnel ",* 5th edition, Les Éditions Yvon Blais, 2008, p. 1002; *Mi / ls* c. *The Queen,* [1986] 1 SCR 863, p. 882.

[8] R. c. *Conway,* [201O] 1 SCR 765, 2010 SCC 22, at para. 77.

book "*Practice and Procedure Before Administrative Tribunals*":

> "As a general rule, the courts are very reluctant to intervene in administrative proceedings bath while the proceedings are underway or where the legislated avenues for review have not yet been exhausted. A party wishing to seek assistance from the courts in mid- proceeding or without having followed established appeal routes must have a very good reason for doing so. **Tempting as it may be to run off to seek immediate justice, the modern rule in both appellate and judicial review is that, except in rare cases, the courts will not entertain applications contesting decisions of agencies where the main proceeding remains uncompleted before the agency or where an appeal route remains untried,** The court[s] do this, in the context of appeals, by usually interpreting statutory appeal provisions as referring to appeals of final decisions, and, in the context of judicial review, by exercising their discretion to decline to hear the judicial review."[9];

20. In addition, the certification case remains in front of the Board until the Board has made a final order;

21. Indeed, in the decision *Manitoba (Labour Board)* v. *MGEU,* the judge expressed the opinion that in the certification procedure the final decision is that of the certification order:

> "**However, in my view, the only "final" order in the context of the applications for certification which are currently before the Labour Board will be the ultimate orders of certification. The intent of section 143 was to prevent the fragmentation of proceedings,** MGEU is not precluded from challenging the decision concerning the release of addresses but cannot bring a challenge until certification proceeding are complete. The case law referred to by the Board's counsel states that Manitoba courts have applied s. 143 strictly ..."[10];

22. Thus, the Board, having not made an order for certification for one or the other of the trade union organizations, remains seized of the case which makes it the most appropriate body to study the constitutionality of section 238.14 of the FPSLRA;

iii) The request is not late

23. Thirdly, QMPMA submits that, for the reasons given above, its request is not late because the decision was not rendered on the merits of the case and, to that end, nothing prevents the Board from deciding the constitutional issue at this stage of the procedure [11];

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[9] R. MACAULAY and J. SPRAGUE, "*Practice and Procedure Before Administrative Tribunals*" Toronto, Carswell, Vol. 3, pp. 28-15 - 28-16 cited in *Manitoba (Labour Board)* v. *MGEU* 2012 MBQB281, para.19.

[10] *Manitoba (Labour Board)* v. *MGEU* 2012 MBQB 281, para. 23.

[11] *Baker v. Canada (Minister of Citizenship and Immigration),* 1999 CanLII 699 (SCC), [1999] 2 SCR 817, at para. 27; F. KRISTJANSON and N. LAMBEK, " *Applying the Charter in Everyday Administrative Decision-Making* " 26 Can. J. Admin. L. & Prac. 195, 2013, p. 6; *Hydro-Québec* and *Cooperative Association of Home Economics of the Outaouais,* 2014 CanLll 4215.

24. The Board, which is the master of its procedure, may choose the means it considers most appropriate for deciding the constitutional issue raised by QMPMA;

iv) Conclusion on the first issue

25. From the NPF and the Employer's answers it appears that they do not object to the jurisdiction of the Board to decide on the constitutional issue raised by QMPMA;

26. The parties seem to agree that the Board may refuse to enforce legislation on constitutional grounds[12];

27. Given the context of the case in question, the Board is the only tribunal that can grant QMPMA remedy "*appropriate and just in the circumstances";*

28. If the Board decides not to apply section 238.14, it will be able to hear the arguments as to the appropriateness of the provincial bargaining unit and render a decision that may result in the certification of QMPMA;

29. The Board has the power to decide on questions concerning the right of association;

30. Consequently, the Board's refusal to hear the constitutional issue would deprive QMPMA of the right to be heard by the most appropriate body, which is the only one able to grant it an adequate remedy, and without multiplying the procedures in court;

31. For these reasons, QMPMA submits that the issue it raises deserves to be decided by the Board at this stage of the proceedings;

B. Should the Board reconsider the decision of October 11, 2017, if QMPMA asks for reconsideration?

32. While the NPF and the Employer claim that QMPMA is asking for a reconsideration of the decision of October 11, 2017 regarding the bargaining unit, QMPMA submits that the constitutional question is a new and independent issue that may be raised after the Board has announced its intention to apply section 238.14 of the FPSLRA, but before the judgment on applications for certification;

33. However, in the event that the Board concludes that QMPMA is asking for a reconsideration of its decision with respect to the bargaining unit, QMPMA submit the following arguments;

i. Specific Context

34. This case is different from cases in which the courts are required to determine the appropriate bargaining unit following a substantive hearing at which the parties present factual evidence, according to the case law criteria;

[12] *Okwuobi c. Lester B. Pearson School Board,* 2005 SCC 16, para. 44-45 (No. 10 in NPF List of Authorities).

35. The NPF notes in its response that the Board's case law provides guidelines and criteria for the exercise of its discretion to review or modify its orders or rulings;

36. These guidelines have been summarized in *Chaudhry* in the following terms:

- "The review must not re-litigate **the merits** of the case;
- it must be based on a substantial change of circumstances;
- it must consider only new evidence or arguments that could not reasonably be presented at the initial hearing;
- we must ensure that new evidence or **arguments have important and decisive consequences for the outcome of the complaint;**
- it must be ensured that the review is based on a compelling reason;
- the power of review must be exercised "[...] judicious, with great care and infrequently [...]"[13] ;

37. Since the legislation was changed when QMPMA and NPF applications for certification were already filed with the Board, there was no hearing or decision on the merits of the case;

38. To this end, in its decision of October 11, 2017, the Board noted that the main purpose of the NPF's request of June 22, 2017 was to consolidate the two applications for certification:

> "**The main purpose of the motion is to consolidate the two applications for certification to represent RCMP members and reservists, except for officers and civilian members.** QMPMA did not comment directly on the request to consolidate the applications. Its arguments relate to the representation of the specific group for which she wants to be certified as the bargaining agent, namely the division "C "'s RCMP officers and reservist based in Quebec."[14]

39. By the same application, the NPF asked the Board to declare that the appropriate bargaining unit is the one defined in Article 238.14 of the FPSLRA, without a hearing on the merits of this issue:

> "5. With Bill C-7 coming into force, Parliament has conclusively determined the appropriate bargaining unit in these applications, and there is no need for a hearing on that issue."[15] ;

40. After consolidating the two applications, the Board merely noted the legislature's desire that the national bargaining unit alone be able to bargain collectively[16];

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[13] Confirmed by the Federal Court of Appeal in *Chaudhry* v. *Canada (Attorney General),* 2009 CAF 376; Quoted by *Bernard* c. *Professional Institute of the Public Service of Canada, Treasury Board and Canada Revenue Agency,* 2015 PSLRB 59, para. 60

[14] National Police Federation v. Treasury Board of Canada, 2017, FPSLREB 34, para.23.

[15] " Motion with respect to Bill C-7 " Submitted by the NPF on June 22, 2017.

[16] [16]Supra note 14 at para. 26-28

41. As the Employer mentions in paragraph 5 of its response, the Board did not consider either the additional grounds or the factual evidence in favor of the national or provincial bargaining units;

42. The decision was made on file, and the Board made no findings of fact as to which bargaining unit was appropriate;

43. The Board made no finding as to whether section 238.14 of the FPSLRA violated freedom of association;

44. Consequently, in the absence of a hearing on the merit of the issue concerning the certification unit, only the last three review criteria can be applied in this case;

ii. Application of the criteria

45. The constitutional argument will have important and decisive consequences on the outcome of the case, as it could result in the inapplicability of the provisions of the FPSLRA preventing the Board from hearing evidence on the unit appropriate for collective bargaining;

46. Without repeating its own arguments, QMPMA adopts the arguments of the Employer that there are compelling reasons for the Board to reconsider its decision of October 11, 2017 and address the constitutional question;

47. Moreover, superior court case law allows the constitutional question to be raised before the administrative tribunal even at the reconsideration stage;

48. For example, in the decision *Allied Hydro Council,* Justice Pearlman of the British Columbia Superior Court wrote that:

> "[138] The Board continued to receive submissions on CMAW's reconsideration application until September 24, 2007 and did not issue its Reconsideration Decision until October 16, 2007. **There was nothing to prevent the petitioner from delivering to the Board, the Attorney General, and the other parties, a Notice of Constitutional Question during July, August, or September 2007, with a request that the Board hears the constitutional challenge before finally disposing of CMAW's reconsideration application.**
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> [139] The lack of any satisfactory explanation as to why the constitutional issue was not raised before the Board militates against the petitioner raising a new Charter issue on judicial review: Waters v. British Columbia (Director of Employment Standards) 2004 BCSC 1570 (Canlll), 40 C.L.R. (3rd) 84, at paras. 27-38."[17];

ii) Conclusion about the second issue

49. In this respect, QMPMA respectfully requests the Board to reconsider its decision of October 11, 2017, taking into consideration the arguments of the parties regarding the constitutional validity of the article 238.14 of the FPSLRA and by calling a

[17] *Allied Hydro Council* v. *Construction, Maintenance and Allied Workers Bargaining Council,* Local 2300, 2008 BCSC 1660, by 138-139.

hearing to hear them;

C) Must the Board stay the proceedings as long as the constitutional question is not decided?

50. QMPMA has asked the Board to decide the constitutional question before any further hearing on this case to ensure that, in the event of the success of this challenge. the members of Division "C " will be able to choose a union organization within a bargaining unit that respects their geographical, functional, administrative and linguistic characteristics;

51. The Supreme Court outlined the following criteria for a stay of proceedings:

> "The *Metropolitan Stores* decision establishes a three-step analysis that courts must apply when considering an application for stay of proceedings or interlocutory injunction. First, a preliminary study of the merits of the case must establish that there is a serious question to be decided on. Secondly, it must be determined whether the applicant would suffer an irreparable prejudice if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater prejudice from the granting or refusal of the remedy pending a decision on the merits. It may be useful to examine each aspect of the criterion and then apply it to the facts of the case."[18] ;

52. In the obiter of the case *Miscellaneous Teamsters*[19] cited by the NPF, the Alberta Labour Relations Board wrote that these criteria were "less useful" when it was a matter other than a judicial review:

> "The request here is for a stay pending a judicial review application. In this situation, the criteria used by the Courts for granting a stay of proceedings or an interlocutory injunction provide helpful guidance. **They are less helpful when considering Board stays for reasons other than judicial review.**";

53. Moreover, the alleged case law on the question of suspension by the NPF and the Employer except for the case *CUPE, Locals 189 and 408*[20] relates to applications for suspension pending the outcome of a judicial review or constitutional challenge before superior courts;

54. In this case, in its analysis, the Board must take into consideration the fact that it remains seized of the certification case and that it is not a suspension of an application for judicial review;

55. Labour tribunals may also consider unique or special considerations that do not require the application of the criteria for stay of proceedings developed by the

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[18] *RJR - Macdonald Inc.* c. *Canada (Attorney General),* [1994] 1 SCR 311, 1994 Canlll 117 (SCC), p. 334.

[19] *Miscellaneous Teamsters, Local Union 987, App / icant* and *Alberta Brotherhood of Dairy Employees* and *Salesmen, Respondent and Northern Alberta Driver Dairy Pool Limited, Respondent,* [1991] Alta LRBR 159, p. 4 (No. 8 in the NPF's List of Authorities).

[20] *CUPE, Locals 189 and 408 (Re),* [2009] Alta LRBR 266. (No. 6 in NPF's List of Authorities).

common law[21];

56. To this end, the Board must apply the three criteria according to the procedural stage and the particularities of the NPF and QMPMA cases;

i) Serious question to judge

57. The case *Miscellaneous Teamsters* demonstrates that, when the first test is applied to the stay of proceeding application for judicial review, the case is already judged on the merits and is no longer subject to review. Therefore, it is more difficult to meet that criterion and raise "a serious question to judge." which is not the case in question[22];

58. According to the judgment of the Supreme Court *RJR - Macdonald Inc.,* when the Charter argument is alleged, the court must only make a preliminary analysis of the case to determine whether the issue is serious:

> "What are the indicators of a "serious issue to be judged"? **there are no special requirements to meet this criterion. Minimum requirements are not high.** The judge hearing the motion must make a preliminary examination of the merits of the case. The decision on the merits rendered by the judge of the first instance relating to the Charter is a relevant but not necessarily conclusive indication that the issues raised on appeal are serious issues: see *Metropolitan Stores,* supra, at para. 150. Similarly, leave to appeal on the merits granted by an appellate court is an indication that serious issues are being raised, but a denial of leave in a case that raises the same issues does not automatically indicate that the substantive matters are not serious..."[23];

59. QMPMA subscribes to the position of the Employer that the constitutional validity of the impugned provisions of the FPSLRA is a serious issue to be decided;

60. In fact, QMPMA reiterated in its application of December 20, 2017, as well as in previous letters, that the new regime has the effect of preventing QMPMA from expressing its point of view as to the appropriateness and necessity of the bargaining unit proposed despite the decision *Mounted Police Association of Ontario v. Canada (Attorney General)[24];*

61. Imposing on members of Division "C" a national bargaining unit with no opportunity to make their point of view constitutes a substantial and unjustified interference to collective bargaining and, therefore, to freedom of association protected by the Charter;

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[21] *United Food and Commercial Workers Union Union, Local No. 401* v. *North Country Catering Ltd,* 2011 Canelll 74482 (AB LRB), para. 11 and 15.

[22] Supra, note 19, p. 5-6.

[23] Supra, note 18, p. 337.

[24] *Mounted Police Association of Ontario* v. *Canada* (Attorney General), [2015] 1 SCR 3, 2015 SCC 1, para. 98.

ii) Irreparable prejudice

62. According to the Supreme Court, in the second step, the only question is "if the refusal of the remedy could be so unfavorable to the applicant's interest that the damage could not be remedied, in case of divergence between the decision on the merits and the outcome of the interlocutory application"[25];

63. "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be remedied because one party cannot collect damages from the other.[26]

64. The Supreme Court also notes that "irreparable harm" is "a prejudice which is not likely to be compensated by damages or which can hardly be "[27];

65. In the context of labour relations, this means, in particular, prejudices that can not be repaired through collective bargaining mechanisms:

> "(...) We take the irreparable harm test in the labour context to mean harm that **would be difficult or not susceptible to resolution through the mechanisms of the collective bargaining process or damages.** It would be unwise to set damages as the sole test and ignore the (far greater) flexibility of collective bargaining solutions."[28];

66. More specifically, in the case of *CUPE, Locals 189 and 408,* the Labour Relations Board of Alberta wrote that the loss of opportunity to represent members was irreparable harm:

> "36 The Board concludes that **the loss of the opportunity to represent their members and to influence decisions relating to their working conditions could not be subsequently cured.** The administrative disruption is serious and may not be recoverable." [29];

67. Neither QMPMA nor NPF have the right to bargain collectively for RCMP members;

68. Moreover, as the NPF notes in its arguments, the damage of QMPMA would be summarized for the moment, by the loss of opportunity to represent members of Division "C"[30];

69. QMPMA submits to the Board that even this prejudice, according to case law, constitutes irreparable harm: it cannot be compensated for by either the damages or the collective bargaining mechanisms;

70. Despite what the Employer pretends, QMPMA's loss of opportunity to represent

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[25] Supra, note 18, p. 340-341.

[26] Supra, note 18, p. 341.

[27] *Manitoba (PG)* v. *Metropolitan Stores Ltd.,* [1987] 1 SCR 110, 1987 CanLII 79 (SCC), para. 35 (No. 7 in NPF's List of Authorities).

[28] Supra, note 19, p. 6.

[29] Supra note 20, para. 36

[30] "Reply submissions of the National Police Federation" January 4, 2018, para. 22.

members of Division "C" and to be certified as a bargaining agent will not be "easily repairable" by the Board;

71. Indeed, the failure to stay the proceedings would deprive QMPMA of the power of representation of its members for an indefinite period in the event that the Board finds that section 238.14 of the FPSLRA violates the Charter and that the provincial certification is fit for bargaining collectively;

iii) Balance of convenience

72. In the third step, the court analyzes the balance of convenience and the public interest:

> "In the Metropolitan Stores decision, Justice Beetz described, at para. 129, the third criterion applicable to an application for interlocutory relief as a criterion consisting "**To determine which of the two parties will suffer the greatest prejudice in granting or refusing an interlocutory injunction pending a decision on the merits."** Given the relatively low minimum requirements of the first criterion and the difficulty of applying the irreparable harm test in Charter cases, it is at this stage that will be decided many interlocutory procedures."[31];

73. According to the Supreme Court, " public interest " includes both the interests of society as a whole and the particular interests of identifiable groups[32];

74. To this end, QMPMA submits to the Board that, in this case, this is a special situation, namely the first certification of a union body representing the members of the RCMP;

75. Since no union organization has yet been certified, no vote has been taken, and no negotiation process has been started yet, the stay of proceedings will not cause any prejudice to the NPF or the Employer, while the failure to suspend it will cause irreparable harm to QMPMA;

76. For this purpose, in the case of *Colispro Inc.,* the Canada Industrial Relations Board had granted a stay of proceedings, particularly considering the absence of prejudice to the parties:

> "5 As part of this request for reconsideration, the applicant sought a stay of proceedings in File No. 27855-C pursuant to paragraph 16 (1) of the Code. On June 15, 2011, considering that none of the parties objected at the request to postpone the hearing scheduled for June 29 and 30, 2011, and **given that it did not foresee any prejudice to the parties,** the Board granted the request. As a result, the hearings were canceled, and postponed *sine die.*"[33];

77. It should also be noted that the delay required to be heard before the Board is

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[31] Supra, note 18, p. 342.

[32] Supra, note 18, p. 344.

[33] *Canadian Union of Postal* Workers v. *Colispro Inc.* 2011 CIRB 613, ss. 5.

much shorter than that of the superior courts, which reduces the actual or theoretical prejudice that the parties may suffer because of delays if the request for stay is granted;

78. More specifically, in the case of *CUPE, Locals 189 and 408,* the Labour Relations Board of Alberta has granted a partial stay, taking into account the following considerations:

> "40 ... **Based upon the evidence and given the complexity of the task, it is unlikely that bargaining will produce finalized receiving agreements before the Charter challenges are heard by the Board in October,**
>
> 41 The Board recognizes that labour relations are generally advanced when disputes can be resolved expeditiously and we are therefore reluctant to delay collective bargaining.
>
> 42 **The Board must also consider the labour relations interests of the affected employees,** If a stay is not granted, the protection and promotion of their labour relations interests will be shifted to a union that did not negotiate their collective agreement and has no experience administering it, only to be shifted back again some months later if the Charter challenges are successful. There is likely to be some transitional period during which the new bargaining agents become familiar with the terms of the collective agreements, the operations and employer personnel and the employees in the units being assumed. **There is also likely to be some natural reluctance on the part of the employees to embrace their new bargaining agent, particularly if there is some chance that the change will only be temporary."**[34] ;

79. Consequently, it would be in the public interest for the Board to definitively settle all matters within its jurisdiction currently before it before making a final certification order for to members of the RCMP;

iv) Conclusions on the third question

80. For these reasons, QMPMA asks the Board to rule on the constitutional question before deciding on the merits of the applications for certification submitted to it;

81. That being said, QMPMA leaves it to the discretion of the Board to decide whether the administrative process can proceed in parallel to the three issues raised by the NPF in its petitions of June 22, 2017 and November 3, 2017, which can be summarized as follows:

    a) are the applicants "trade union organizations";

    b) do the applicants meet the requirements of paragraph 63 (1) (b) of C-7 and, in particular, are the applicants union organizations primarily engaged in representing members of the RCMP ("police-only")?);

[34] Supra note 20, para. 40-42.

c) were the persons representing the applicants duly authorized to make the application;

CONCLUSION

82. In conclusion, QMPMA submits that the power to decide questions concerning the right of association is at the heart of the Board's jurisdiction, which is the only authority that can grant QMPMA adequate remedy, without fragmenting judicial procedures;

83. The Board may choose the means it considers most appropriate to ensure that QMPMA is heard on the constitutional question;

84. For these reasons, QMPMA reiterates its request to the Board to decide the constitutional question and, to that end, to establish the timetable for an oral hearing to take place;

85. In addition, QMPMA asks the Board to stay all or part of the proceedings and to rule on the constitutional question first;

86. In the alternative, in the event that the Board decides that QMPMA's application constitutes a request for reconsideration of its decision, the latter respectfully requests the Board to reconsider the decision of October 11, 2017 taking into consideration the arguments of the parties regarding the constitutional validity of section 238.14 of the Act and all consequential provisions and by calling a hearing to hear them.

Montreal, February 19, 2017

(Me Marco Gaggino)