LAVIGNE v. OPSEU: STUMBLING TOWARDS A FREEDOM *FROM* ASSOCIATION

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INTRODUCTION

The decision of the Supreme Court of Canada on the constitutionality of compulsory union dues and their use for "non-collective bargaining" purposes in *Lavigne v. OPSEU*[1] was awaited with much anticipation by labour. They had learned from the *Labour Trilogy*[2] decisions that freedom of association under section 2(d) of the *Charter* did not provide any protection for the right to strike either as a means of protecting the interests of workers or pursuing the fundamental purposes of their association in unions. Labour had also learned from other decisions of the Supreme Court that the guarantees of freedom of association and expression were unlikely to provide any meaningful protection for other forms of collective action by workers, including primary[3] or secondary[4] picketing in support of a lawful strike taken to protect or further their interests. More recently, they had learned that the freedom of association found in the *Charter* did not protect a more limited right to collective bargaining itself, or at least a right equal to state procedures for collective bargaining.[5]

What remained unresolved was the extent to which freedom of association under the *Charter* included a negative aspect, protection for a freedom *from* association. Labour and many labour law academics were concerned with the potential negative impact of the recognition of a freedom to not associate on the ability of legislatures to enact effective structures for collective bargaining and the ability of unions to gain and maintain strength through effective union security measures. And, apart from its implications for labour legislation and the labour community, the ruling in *Lavigne* was anticipated because of its broader implications for the ability of modern Canadian governments to compel the combining of efforts by individuals in other spheres of activity to further collective social and economic interests.

Although, ultimately, all members of the Court upheld the use of compulsory agency dues by unions for "non-collective bargaining" purposes, a slim majority in *Lavigne* stumble towards the recognition of some concept of freedom *from* association under section 2(d). But there is significant disagreement among that majority as to its content. Three justices, for the reasons indicated by La Forest J., urged recognition of a broad conception of a freedom to not associate, whereas McLachlin J. supported the recognition of a narrower, more purposive conception of the freedom to not associate. Three judges, for reasons stated by Wilson J., rejected recognition of a freedom from association in any form under section 2(d). Consequently, only La Forest J. and his supporters would find a violation of section 2(d) in the use of compulsory agency shop dues for purposes outside the immediate concerns of the bargaining unit, although even they would uphold such usage of compelled dues under section 1 of the *Charter*.

THE FACTS

Lavigne was a member of the academic staff bargaining unit at one of twenty community colleges established in Ontario under the *Ministry of Colleges and University Act*[6] but had never been a member of the bargaining agent, the Ontario Public Service Employees Union (OPSEU). Nevertheless, he was required to pay the equivalent of regular union dues to OPSEU under an agency shop clause[7] in the collective agreement between OPSEU and the employer Council of Regents.[8] The relevant legislation was *permissive* in nature, leaving it open to the parties to negotiate over the inclusion of an agency shop clause in their collective agreement.[9]

The main thrust of the applicant's *Charter* challenge was the claim that the compelled payment of union dues

1. *Lavigne v. OPSEU* (1991), 81 D.L.R. (4th) 545 (S.C.C.).
2. *Ref. re Alberta Public Service Employee Relations Act*, [1987] 1 S.C.R. 313; *Public Service Alliance of Canada v. A.G. of Canada*, [1987] 1 S.C.R. 424; and *Gov't of Saskatchewan v. RWDSU, Local 544*, [1987] 1 S.C.R. 460.
3. *B.C. Gov't Employees Union v. A.G. of B.C.*, [1988] 2 S.C.R. 214.
4. *Dolphin Delivery v. R.W.D.S.U., Local 580*, [1986] 2 S.C.R. 573.
5. *P.I.P.S. v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367.
6. R.S.O. 1980, c. 272.
7. Agency shop"(often referred to as Rand formula) clauses require all members of the bargaining unit, including non-union members, to pay to the union an amount equal to regular union membership dues. Deductions are usually required to be made by the employer at source, as they were in this case. Agency shop clauses must be distinguished from other forms of union security, such as "union shop" clauses and "closed shop" clauses. A union shop clause requires all employees in the bargaining unit to become and remain members in good standing of the bargaining agent union within a short period of becoming an employee in the bargaining unit. A closed shop provision requires the employer to hire only members of the bargaining agent union for employment within the bargaining unit.
8. The Ontario Council of Regents for Colleges of Applied Arts and Technology had been designated as the exclusive bargaining agent for college employers in a centralized province-wide scheme of collective bargaining established for all Ontario colleges in the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 74, s. 2(3). The Council was established under s. 5(2) of the *Ministries of Colleges and Universities Act*, R.S.O. 1980, c. 272.
9. See sections 51, 52 and 53(1) of the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 74.

to OPSEU under the agency shop clause violated his *Charter* freedoms of association and expression, in so far as the compelled dues were used by the union for non-collective bargaining purposes. The expenditures objected to by the applicant as "non-collective bargaining" in nature can be summarized briefly under the following headings:

1. Financial contributions to a political party.
2. Financial contributions to disarmament and other peace campaigns, including the *Operation Dismantle* litigation.
3. Financial contributions to campaigns concerning the expenditure of government funds, including the expenditure of funds for a domed stadium in Toronto.
4. Financial contributions to unions and workers in foreign countries, including contributions to striking coal miners in the United Kingdom.
5. Financial contributions to other social causes (i.e. free choice in relation to abortion).
6. The portion of affiliation dues paid by OPSEU (out of compulsory dues) to affiliated or parent labour organizations — National Union of Provincial Government Employees (NUPGE), the Ontario Federation of Labour (OFL), and the Canadian Labour Congress (CLC) — used for political and social causes of the type described in paragraphs (1) - (5).

The applicant took the position that compelled payment of dues itself, to be used for any purpose, constituted a *prima facie* violation of section 2(d) and section 2(b)[10] of the *Charter*. He conceded, however, that at the level of analysis under section 1 of the *Charter,* compelled payment of dues under an agency shop clause was a reasonable limit on his *Charter* freedoms in so far as the dues were used for collective bargaining activity. But, Lavigne argued that compelled payment of dues used for non-collective bargaining purposes could not be justified as a reasonable limit under section 1. Lavigne was successful in the Ontario High Court[11] but had his claim dismissed by the Ontario Court of Appeal.[12]

THE APPLICATION OF THE CHARTER

A strong majority of the Court (five of seven judges) supported the reasons of La Forest J. on the application of the *Charter*.[13] His finding in favour of *Charter* applicability continued the focus on requirements, established in several prior decisions of the Court,[14] of "governmental conduct" by a "governmental actor".[15] Of great significance for future cases is the finding that the existence of permissive legislation allowing the parties to agree to such union security clauses is not, by itself, sufficient to implicate the legislature as the government actor and require the *Charter*'s application.[16] Rather, the application of the *Charter* hinges on the finding that the employer was a Crown agency.[17] There was sufficient governmental conduct in the employer's acquiescence to the agency shop clause, which obligated the Council to deduct dues and remit them to the union, to attract the *Charter*'s application.

La Forest J. also rejected arguments that the governmental actors should not be subject to the *Charter*

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10. The s.2(b) claim of Lavigne was rejected by all judges at all levels. In the Supreme Court, La Forest J. dismissed it quickly, finding there was no attempt to convey meaning in the compelled contribution. Wilson J. found that the form of the contribution did not align the employee who refused to join the union with the activities or views of the union in any way or interfere with the employee's freedom to express her dissent. The Court's cursory examination of s.2(b) issues will not be discussed further herein.

11. *Lavigne v. OPSEU* (1986), 55 O.R. (2d) 449 (Ont. H.C.). Mr. Justice White held that the *Charter* applied due to the presence of a governmental actor (the Council of Regents) and governmental action in the form of entering into the collective agreement. He also found that freedom of association under the *Charter* included a freedom from compelled association which was violated whenever the individual was forced to combine with others to achieve a common end. Thus compelled contribution of financial resources through compulsory agency dues could only be upheld if found to be a reasonable limit under section 1. White J. held that compelled contribution of dues could be justified to the extent they were used for collective bargaining purposes, but could not be justified under section 1 if used for other purposes. In separate reasons reported at 60 O.R. (2d) 486, White J. held that most of the impugned expenditures were not permissible, except for the contributions to other unions. He issued a five page declaratory order requiring the union to establish a complex "opt-out" mechanism with a procedure for objections to union expenditures designed to ensure procedural fairness for dissident employees.

For an extensive commentary on the decision, see Etherington, "Freedom of Association and Compulsory Union Dues: Towards a Purposive Conception of a Freedom to Not Associate" (1987) 19 Ottawa L. Rev. 1.

12. (1989), 67 O.R. (2d) 536. The Court of Appeal held that Lavigne's challenge was a challenge against the union's use of the compelled dues, which was a private activity by a private actor and hence beyond the reach of the *Charter*. The Court went on to indicate that if the *Charter* did apply there was no infringement of Lavigne's freedom of association. Although it refused to rule on whether the freedom did include a negative aspect, if held that, if the *Charter* did protect a negative freedom from association, the right to refrain from association does not necessarily include the right not to be required to support an organization financially. It also indicated that any restriction on how a union spent its dues was more appropriately a legislative matter than a matter for the judiciary.

13. The concurring reasons of Wilson J. on the *Charter* application issues, in which she argued for adoption of a comprehensive three-part test for determining *Charter* applicability to "non-governmental" bodies, were supported by L'Heureux-Dubé J.

14. See *RWDSU, Local 580 v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573; *McKinney v. University of Guelph*, [1970] 3 S.C.R. 229; and *Douglas/Kwantlen Fac. Assoc. v. Douglas College*, [1990] 3 S.C.R. 570.

15. *Lavigne, supra* note 1 at 618-622, per La Forest J.

16. *Lavigne, supra* note 1 at 618, per La Forest J.

17. The Court relied solely on the element of government control over the Council in determining that it "fell within the apparatus of government". *Ibid.* at 619.

when engaged in activities that are primarily of a private, commercial, contractual or non-public nature. It was important that the *Charter* be applicable to government actors when engaged in commercial or non-governmental activity to prevent governments from circumventing *Charter* obligations by undertaking such activities. As well, to enable the *Charter* to play a positive role in the creation of society-wide respect for the principles it embodied, it was necessary that government provide a model of how Canadians should treat each other when it undertook activities in the private sector.[18]

In the final analysis it would appear that merely permissive legislation enabling private parties to agree to particular terms in a collective agreement will not render the *Charter* applicable to collective agreement provisions between private parties. However, the judgement indicates the *Charter* is generally applicable to terms of public and quasi-public sector collective agreements as long as the employer is sufficiently controlled by government to be identified as "falling within the apparatus of government."

A FREEDOM TO NOT ASSOCIATE

Four of the seven judges opted for recognition of some form of a freedom to not associate, but there was strong disagreement between McLachlin J., writing for herself, and La Forest J., writing for Sopinka and Gonthier JJ., over the scope of the freedom to not associate. Wilson J., writing for Cory and L'Heureux-Dubé JJ. on this issue, held that freedom of association did not include protection for a freedom from compelled association.

La Forest J., citing protection of the individual's interest in self-actualization and fulfilment as the essence of both positive and negative aspects of freedom of association, held that a purposive conception of the freedom must include "freedom from forced association".[19] However, a *Charter* freedom *from* association had to recognize that everyday forms of compelled association were a "necessary and inevitable part of membership in a democratic community, the existence of which the *Charter* clearly assumes." The compulsory payment of taxes to support government policies to which the individual is opposed is but the most obvious example. Some degree of compelled association, beyond paying taxes, would be constitutionally acceptable where the association is created by the workings of society in pursuit of the common interest.[20]

La Forest J. found that compelled payment of dues, even in small amounts, affected the autonomy of the individual and amounted to compelled association. Because the freedom to associate consisted of the right to organize, belong to, maintain, and participate in the activities of an association,[21] the denial of any one of those rights denies the freedom and being forced to do any one of those activities interferes with the freedom to not associate. But, given the need for compelled combining of efforts to further the collective social welfare in modern society, some limitations on the freedom not to associate had to be recognized.

In his search for limits, La Forest J. rejected suggestions that a purposive conception of the freedom should only find interference with that freedom where the compelled combining of efforts threatened one of the constitutional interests which the freedom was designed to protect.[22] In his opinion, this more restrictive approach towards a freedom to not associate should be broadened

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18. "The extent to which government adherence to the *Charter* can serve as an example to society as a whole can only be enhanced if the government remains bound by the *Charter* even when it enters the marketplace." *Lavigne, supra*, note 1 at 622, per La Forest J.

Court watchers have to be struck by the contrast between this reasoning for applying the *Charter* to government agencies when they engage in commercial or "private" activity and the Court's rejection of similar arguments for the application of the *Charter* to the *courts* themselves as government actors when enforcing common law doctrines in litigation between private parties in *RWDSU v. Dolphin Delivery (supra* note 4). One can draw the inference that it is more important for little-known government agencies such as the Council of Regents to provide a model of respect for *Charter* values than it is for our courts to do so in the development and application of common law.

19. *Lavigne, supra*, note 1 at 624, per La Forest J. La Forest J. relied on *R v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295: "Freedom in a broad sense embraces both the absence from coercion and constraint, and the right to manifest beliefs and practices." (at 336-337).

20. *Lavigne, supra*, note 1 at 626, per La Forest J..

21. This definition of the scope of the positive aspects of the freedom is allegedly drawn from *Ref. re Alberta Public Service Employee Relations Act*, [1987] 1 S.C.R. 313. One might question the validity of this definition in light of the decision in the *PIPS v. NWT (Commissioner)* decision, *supra*, note 5, which implies that there is no protection for the right of individuals to participate in the activities of the association unless they are otherwise protected activity under another *Charter* right.

22. La Forest J. here referred to the arguments found in Etherington, *supra*, note 11 at 43-44, that a purposive interpretation of the freedom from association would impugn compelled association only where it threatened one of the four primary political process and liberty interests which the freedom was designed to protect. I maintained that a forced contribution did not threaten the constitutional interests at stake unless it:

- involved governmental establishment of, or support for particular political parties or causes; or
- impaired the individual's freedom to join or associate with causes of her choice; or
- imposed ideological conformity; or
- personally identified the objector with political or ideological causes which the association supports.

to allow the Court to interfere with a government decision to compel association on two other grounds which are not related to the political process or individual liberty interests at stake. First, the Court should be able to review the wisdom of the legislature's determination that a compelled combining of efforts was required to further the collective social welfare. If the Court approves of the legislature's social policy choice, it can still find the individual's freedom from association infringed either because one of the liberty interests to be protected by the freedom is threatened, or (and this is a very big "or") because the association is acting outside of the "furtherance of the cause which justified its creation."[23]

This latter broad ground for intervention relieves the dissident individual from having to demonstrate a link between the compelled association and the liberty interests at stake under a purposive conception of the freedom to not associate. It is not necessary to show that the form of association involved entails the government establishment of a particular political party or ideology, impairment of a payor's freedom to associate or express herself as she pleases, the imposition of ideological conformity, or the identification of the objecting individual with particular political causes or ideology. Instead, La Forest J. adopted the American standard for freedom from association, developed in a number of cases concerning compulsory union dues.[24] La Forest J. summarized this standard as follows:

> In my view, it is more consistent with the generous approach to be applied to the interpretation of rights under the *Charter* to hold that the freedom of association of an individual member of a bargaining unit will be violated when he or she is compelled to contribute to causes, ideological *or otherwise*, that are beyond the *immediate concerns* of the bargaining unit.... When that association extends into areas outside the realm of common interest that justified its creation, it interferes with the individual's right to refrain from association. (emphasis added)[25]

La Forest J. acknowledged difficulty in drawing the line between "activities that are related to the workplace and those that are not" and admitted that where one draws the line "will depend on one's political and philosophical predilections, as well as one's understanding of how society works."[26] He suggested in his reasons, however, that he has a rather narrow view of the immediate concerns of the bargaining unit, equating them with addressing "the matters, the terms and conditions of employment for members of his bargaining unit" and "representing Lavigne and his fellow workers in collective bargaining, grievance arbitration, and the like."[27] And, he held that the impugned expenditures relating to the disarmament movement and opposition to the Skydome did violate Lavigne's freedom to not associate because they were not sufficiently related to the concerns of the bargaining unit or to the union's functions as exclusive bargaining agent.[28]

Nevertheless, La Forest J. upheld agency shop provisions which compel employees to pay dues to unions knowing the dues may be used for other than collective bargaining purposes as reasonable limits under section 1 of the *Charter*. The problems of indeterminacy of the standard of 'causes beyond the immediate concerns of collective bargaining' and its invalidity in terms of the role which unions must play in modern society to further workers' interests were not effective to convince La Forest J. to adopt a more restrictive conception of freedom to not associate, but these concerns were recognized in his section 1 analysis.[29] He attempted to avoid the spectre of judicial entanglement, in the form of ongoing judicial review of particular union expenditures, by giving an apparently broad section 1 approval for agency shop provisions which leave the union free to determine union expenditures, even if they include expenditures for items which violate the objecting payor's freedom to refrain from association.

McLachlin J. agreed that freedom of association must contain a negative aspect, a freedom to refrain from

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23. *Lavigne, supra*, note 1 at 632, per La Forest J.
24. See discussion of American case law in Etherington, *supra*, note 11 at 22 to 34. The leading decisions are *Abood v. Detroit Bd. of Education*, 431 U.S. 209 (1977); and *Ellis v. Brotherhood of Rlwy. Workers*, 104 S. Ct. 1883 (1984).
25. *Lavigne, supra*, note 1 at 634-35, per La Forest J..
26. *Ibid.* at 639.
27. *Ibid.* at 632-33.
28. *Ibid.* at 635.
29. *Ibid.* at 635-39. In terms of important governmental objectives, he cited the importance of ensuring that unions have the resources and mandate necessary to allow them to play a role in shaping the political, economic and social context within which collective bargaining will take place. The second important objective was to contribute to democracy in the workplace. These objectives would be seriously undermined if the government or courts were to decide which expenditures could be said to be in the interest of the union's members. Agency shop measures which required contributions without guarantees as to how they would be used were rationally connected to these objectives. They also impaired the individual's freedom to not associate as little as possible when compared with the alternatives. An opting-out process for dissident employees could seriously undermine the union's financial strength and their ability to favourably affect the political, social and economic environment in which collective bargaining takes place. As well, the paternalism and indeterminacy of legislative and judicial attempts to draw the line between appropriate and inappropriate expenses would undermine the status of unions as self-governing and democratic institutions. Indeed, La Forest J. concluded that it would be "highly unfortunate if courts involved themselves in drawing such lines on a case-by-case basis" (at 639).

association. Nevertheless, she adopted a more restrictive and more purposive approach to the freedom to not associate. The constitutional interest to be protected is freedom from enforced association with ideas and values to which the individual does not voluntarily subscribe. She referred to it as "the interest in freedom from coerced ideological conformity."[30] Given this purpose for the freedom, when concerned with compulsory payments to an association such as a union, section 2(d) interests will not be infringed unless the payments are such that they may reasonably be regarded as associating the individual with ideas and values to which the individual does not voluntarily subscribe.[31]

The payment of compulsory union dues under the Rand formula simply did not meet this standard of enforced ideological conformity. The whole purpose of the agency shop clause is to permit a person who does not wish to associate herself with the union to avoid doing so by declining to become a member and thereby dissociating herself with the activities of the union. The compelled payment by its very nature avoids the connotation of personal support for the purposes for which it is used, just as the obligation of a taxpayer to pay taxes is no indication of support for particular policies.

McLachlin J.'s insistence that compelled association be shown to threaten one of the constitutional interests at stake for a violation of section 2(d) to be found is motivated by both practicality and policy.[32] Interpreting section 2(d) to cover compelled financial contributions *per se* or those used for purposes beyond the immediate concerns of the association would recognize the *prima facie* validity of a plethora of claims and put the courts to assessing the justifiability of countless government actions or government supported actions, either by trying to distinguish between "immediate concerns" and more attenuated goals under section 2(d) or under section 1 of the *Charter*. This, despite the fact there may be no threat to the constitutional interests at stake by means of the compelled payment. And, the American standard for freedom from association, adopted by La Forest J. in his reasons, has been controversial and difficult to apply in the United States.[33]

Wilson J. held, however, that the freedom of association does not include protection for freedom to refrain from association. In reasons supported by Cory and L'Heureux-Dubé, she concluded that the Court's prior rulings under section 2(d) restricted the purpose of the freedom to protection for the collective pursuit by individuals of common goals. To protect the freedom to not associate would overshoot the actual purpose of the freedom and set the scene for judicial contests between the positive associational rights of union members and the negative associational rights of non-members. To restrict the freedom to its positive aspects best suited the Court's serious and non-trivial approach to *Charter* guarantees.[34] And, it would avoid the dangers which protection for a freedom from association presented in terms of ongoing judicial review of numerous other forms of compelled association contributions necessary in modern society, not the least of which is government taxation.[35] Wilson J. also expressed great concern with evidence of judicial entanglement resulting from the recognition of compelled contributions as constitutionally impermissible in the United States.[36]

Madame Justice Wilson's final reason for not recognizing a freedom to not associate is that it is not necessary. The other *Charter* rights and freedoms should be sufficient to protect the real constitutional interests at stake in claims for a right to refrain from association. She felt that sections 2(b) and 7 were likely candidates for protection in appropriate cases.[37]

CONCLUSION

Perhaps the most startling feature of La Forest J.'s reasons (supported by Sopinka and Gonthier JJ.) for rejecting a narrower, more purposive conception of the freedom *from* association were his arguments that we should adopt a more generous and expansive interpretation of the freedom because our *Charter* contains a separate explicit right of freedom of

30. *Lavigne, supra*, note 1 at 643, per McLachlin J.

31. *Ibid.* at 643-44.

32. McLachlin J.'s analysis is the closest to the purposive conception of a freedom to not associate which I have advocated previously. See Etherington, *supra*, note 11.

33. *Lavigne, supra*, note 1 at 648, per McLachlin J. For fuller commentary on the difficulties with the American standard, see Etherington, *supra*, note 11 at 34-42.

34. See *Andrews v. Law Society of B.C.*, [1989] 1 S.C.R. 143.

35. *Lavigne, supra*, note 1 at 580-81, per Wilson J.

36. *Ibid.* at 581. She referred to it as having "given rise to an endless train of disputes in the United States."

37. She also argued that even if section 2(d) did include a freedom to not associate it would not be infringed in the *Lavigne* case because the negative aspect of the freedom could not be broader in scope than the positive right to associate previously defined by the Supreme Court. Both the *Alberta Reference* and *P.I.P.S v. N.W.T. (Commissioner)* cases made it clear that section 2(d) did not protect the objects of the association or activities necessary to the pursuit of those objects. Here, Lavigne's complaint was essentially that he could not be compelled to contribute to associational objects of which he disapproved. Wilson J. concluded that if the objects of an association cannot be invoked to advance claims of unions then they cannot be invoked to undermine them. To do otherwise would be to engage in "one-sided justice". *Ibid.* at 583.

association and the presence of section 1 allows us to give generous scope to the right itself and tailor it to given contexts under section 1.[38] This may appear to be a sudden and unseemly conversion to many readers familiar with the Court's decision in the freedom *to* associate cases in the labour setting. Most notably, in the leading decision[39] in the *Labour Trilogy*, the four judges who comprised the majority which rejected protection for the right to strike alluded, in two judgements,[40] to the need for the Court to exercise restraint in giving content to the freedom of association. Both judgments pointed to the danger of constitutionalizing aspects of labour relations which would require the courts to become involved in questioning the decisions of legislatures on labour relations matters, which by their very nature involve a complex and delicate balancing of competing interests. Le Dain J. noted that the Court had recently affirmed the need for restraint in the judicial review of administrative action in the labour area in light of the limits of court expertise in such matters.[41] McIntyre J. pointed out that experience had shown that courts were ill-suited to resolving questions concerning labour relations policy, and the Court should be hesitant to interpret the freedom of association in an expansive fashion to include the right to strike because it could throw them back into the field of labour relations.[42] Finally, in the more recent decision of *P.I.P.S. v. N.W.T. (Commissioner)*[43] the majority, in judgments by Sopinka J. (supported by La Forest and L'Heureux-Dubé JJ) and Dickson C.J., continued the restrictive approach to the interpretation of section 2(d) by holding that it did not protect any aspects of collective bargaining.[44]

La Forest J.'s comments in *Lavigne* would appear to demonstrate that the Court's approach toward the interpretation of section 2(d) in a labour relations context, whether it should be generous and expansive or restrictive and cautious, depends heavily on the nature of the claims being asserted and the values of the individual judges concerning the protection of collective rights and individual rights and freedoms. This seems particularly apparent given that La Forest J. had supported Le Dain J. in the *Labour Trilogy* cases and Sopinka J. had taken a restrictive approach to the interpretation of the freedom in its positive aspects in the *P.I.P.S.* decision. And, two of the strongest proponents of broader protection for collective activities in pursuit of common goals, Wilson J. supporting the right to strike and bargain collectively in the *Trilogy* and Cory J. supporting protection for collective bargaining in *P.I.P.S. v. N.W.T.*, refused to interpret the freedom of association generously in its negative aspect in *Lavigne*. Thus, the decision is important as a window on the values, assumptions and ideology of members of the Court on individual and collective rights in the collective bargaining context and, perhaps, in other contexts where modern Canadian governments compel association to further the collective social welfare.

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38. *Ibid.* at 634. This, of course, is given as the reason why our freedom to not associate should be at least as broad as that adopted in the U.S. courts where the Bill of Rights makes no explicit reference to freedom of association, but the right is implied from the freedom of expression in the first amendment, and there is no counterpart to section 1.
39. *Re Alberta Reference, supra*, note 2.
40. Le Dain J. wrote for Beetz and La Forest JJ. McIntyre J. wrote a concurring opinion.
41. *Re Alberta Reference, supra*, note 2 at 391.
42. *Ibid.* at 415-17.
43. *Supra*, note 5.
44. In fact, of the four judges who made up the majority in *P.I.P.S v. N.W.T.*, only two, Sopinka and L'Heureux-Dubé JJ. seemed to find that freedom of association in its positive aspect protected associational activities which were lawful if performed by an individual. La Forest J. expressly distanced himself from this conclusion, implying that it only protected associational activities which were otherwise constitutionally protected activities under other sections of the *Charter*.