In the Matter of An Arbitration pursuant to
The Health Authorities Act, S.N.S. 2014, c. 32

CANADIAN UNION OF PUBLIC EMPLOYEES, Locals 835, 1933, 2431, 2525, 4150
NOVA SCOTIA GOVERNMENT AND GENERAL EMPLOYEES UNION
NOVA SCOTIA NURSES UNION
UNIFOR, Locals 4600, 4603 and 4606

UNIONS

SOUTH SHORE DISTRICT HEALTH AUTHORITY
SOUTH WEST DISTRICT HEALTH AUTHORITY
ANNAPOLIS VALLEY DISTRICT HEALTH AUTHORITY
COLCHESTER EAST HANTS HEALTH AUTHORITY
CUMBERLAND HEALTH AUTHORITY
PICTOU COUNTY HEALTH AUTHORITY
GUYSBOROUGH ANTIGONISH-STRAIT HEALTH AUTHORITY
CAPE BRETON HEALTH AUTHORITY
CAPITAL HEALTH AUTHORITY
IZAAK WALTON KILLAM HEALTH CENTRE

EMPLOYERS

ATTORNEY GENERAL OF NOVA SCOTIA

ATTORNEY GENERAL

AFFIDAVIT OF WAYNE MACKAY

I, Wayne MacKay, of Halifax, Nova Scotia, Law Professor, make oath and give evidence as follows:

1. I am the Yogis & Keddy Chair in Human Rights Law and Professor of Law at the Schulich School of Law at Dalhousie University.

2. I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief.

3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.

Personal Background

4. I have been a member of the Law School Faculty at Dalhousie University since 1979, and was promoted to Full Professor in 1985.

5. My main areas of legal research and study are *Canadian Charter of Rights and Freedoms*, comparative constitutional law, human rights and education law.

6. I have been consulted and provided advice to provincial and federal governments with respect to legal issues in relation to cyber bullying, education, human rights and constitutional issues.

7. I was admitted as a barrister of the Supreme Court of Nova Scotia in 1980, appointed a member of the Order of Canada in 2005, and was appointed Queen's Counsel in 2009.

8. I have published extensively in the areas of constitutional and *Charter* law, including the role of administrative agencies in applying constitutional principles, domestic implementation of international law, and a variety of *Charter* issues.

9. I accepted an invitation from the Nova Scotia Government and General Employees Union ("NSGEU") to provide an expert analysis of the current state of constitutional and *Charter* principles with respect to the guarantee of the freedom of association in the *Canadian Charter of Rights and Freedoms*; specifically, I reviewed and considered the following:

    1. The role of *Charter* values in interpreting legislation;
    2. General principles of *Charter* interpretation;
    3. A review of the meaning of freedom of association as interpreted by the Supreme Court of Canada.

10. My opinion and analysis is attached and marked as Exhibit "A" to this affidavit.

11. A copy of my abbreviated Curriculum Vitae is attached and marked as Exhibit "B".

SWORN TO before me on the ____ day)
of December, 2014, at Halifax,)
Province of Nova Scotia.)
)
)

_____ _____

Print name: Wayne MacKay
Official Capacity:

In the matter of an arbitration pursuant to *The Health Authorities Act*

This is Exhibit "A" referred to in the affidavit of Wayne MacKay, sworn before me on ____ December, 2014.

_____

Signature

EXHIBIT A

THE NATURE AND SCOPE OF THE CHARTER RIGHTS AND VALUES OF FREEDOM OF ASSOCIATION: A COMPLEX AND EVOLVING LEGAL SAGA

Professor A. Wayne MacKay
Schulich School of Law at
Dalhousie University
and
Yogis and Keddy Chair
in Human Rights Law

November 2014

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I. INTRODUCTION

In preparing this Opinion on the nature and scope of freedom of association under the *Canadian Charter of Rights and Freedoms*[1] I am mindful of the importance of not usurping the role of the Mediator-Arbitrator, James Dorsey Q.C., in this important matter. It is his jurisdiction at this initial level, to interpret and apply not only the challenged legislation but also the relevant provisions of the *Charter of Rights*. My role as I understand it, is the more modest one of addressing the relevant constitutional issues at a more generalized level and not to make specific conclusions about its application in this particular litigation. I will leave the more detailed and applied aspects of this matter to the able counsel arguing the case and the ultimate determinations of the *Charter of Rights* issues in the capable hands of the Mediator-Arbitrator, Mr. James Dorsey.

As one example of this more generalized approach, I will not explore the application of section 1 of the *Charter of Rights* to this case. At the end of the day the *Charter of Rights* section 1 analysis is a very context specific and fact oriented process that I will leave to the litigation process. Similarly, any analysis and commentary on the meaning and scope of the provision of the *Health Authorities Act*[2] will only be at the broad level and by way of putting my Opinion in its particular litigation context.

What I do hope to provide is some modest assistance in understanding the complex and often confusing evaluation of the guarantees in section 2(d) of the *Charter of Rights*. This has been a hotly contested aspect of the *Charter of Rights* and has been subject to spirited debates and disagreement between Judges and arbitrators even at the highest levels. It has also evoked

[1] Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (U.K.) c. 11 (hereinafter referred to as the *Charter of Rights*).
[2] S.N.S. 2014, c. 32.

considerable academic commentary and I will refer to some of this commentary as well as Supreme Court of Canada jurisprudence.

II. CHARTER RIGHTS, VALUES: INTERPRETATION AND THE LIVING TREE

A. Broad and Purposive Charter Interpretation

At the risk of stating the obvious I shall make a few observations about the unique features of *Charter of Rights* interpretation and the need to take a broad and purposive approach. This point has been emphasized since the beginning of *Charter* interpretation.

> From the earliest days of Charter interpretation it was accepted that the interpretation of the text should be broad and "purposive." In *R v Big M Drug Mart* this point was highlighted:
>
> > This Court has already, in some measure, set out the basic approach to be taken in interpreting the Charter. In Hunter v. Southam Inc., [1984] 2 S.C.R. 145, this Court expressed the view that the proper approach to the definition of the rights and freedoms guaranteed by the Charter was a purposive one. The meaning of a right or freedom guaranteed by the Charter was to be ascertained by an analysis of the purpose of such a guarantee; it was to be understood, in other words, in the light of the interests it was meant to protect.
>
> In this same case it was emphasized that this purpose was to be found not just in the isolated words of the right in issue but in the larger context of the Charter as a whole and the society it was meant to serve. Interpretation is to be generous but not so broad as to eclipse the role of the legislative and executive branches of the state:
>
> > In my view this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought by reference to the character and the larger objects of the Charter itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the Charter. The interpretation should be, as the judgment in Southam emphasizes, a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter's protection. At the same time it is important not to overshoot

> the actual purpose of the right or freedom in question, but to recall that the Charter was not enacted in a vacuum, and must therefore, as this Court's decision in Law Society of Upper Canada v. Skapinker, [1984] 1 S.C.R. 357, illustrates, be placed in its proper linguistic, philosophic and historical contexts. (Notes omitted)[3]

The living tree of interpretation of the constitution as developed in respect to the division of powers analysis,[4] is equally if not more applicable in the context of *Charter of Rights* interpretation. This purposive and evolving interpretation applies to the freedom of association guarantees in section 2(d) of the *Charter*, as much as any other section. Not only does society's view of the proper scope for freedom of association and the rights of both individuals and unions in the labour context change over time; but so do the views of judges, as demonstrated by the evolution of section 2(d) interpretations explored in the next section. The concept of freedom of association, like the other *Charter* rights, is an organic and evolving thing.

A rather important element of *Charter of Rights* interpretation is a move towards contextualized decision-making and a focus on the practical effects of court decisions.

> The shift in both constitutional and statutory interpretation does not stop with a purposive interpretation of the text but also embraces an examination of the practical effects of their interpretations. Much more attention is given to social science evidence and matters extrinsic to both the statutory and constitutional texts in issue. In the past the Supreme Court of Canada has been criticized for not paying enough attention to the real life impacts of its decisions and being isolated from the political, economic and social realities of the society it serves. The use of extrinsic social fact evidence increases with time and the Courts of Chief Justices Laskin C.J.C., Dickson C.J.C., Lamer C.J.C. and McLachlin C.J.C each expand the trend. I argue elsewhere that it leads the Court to become more of a "player" on the policy stage and less of an "umpire." (Notes omitted) [5]

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[3] *R v Big M Drug Mart Ltd.*, [1985] S.C.J. No. 17, [1985] 1 SCR 295 at para 116 (S.C.C.) and *Ibid* at para 117, as cited in A. Wayne MacKay, Chapter 4 – "Evolving Fundamental Principles and Merging Public Law Silos: the Reshaping of Canada's Constitutional Landscape", in E. Mendes and S. Beaulac (eds.) *Canadian Charter of Rights and Freedoms*, 5th ed. (Toronto: Lexis Nexis Can. Inc., 2013) at 98-99. The chapters of this book are also to appear as a special issue of the *Supreme Court Law Review* in (2013) 61 S.C.L.R. (2d) 83.

[4] *Edwards v Canada (Attorney General)* [1929] JCJ No. 2, [1930] A.C. 124 (J.C.P.C.).

[5] *Supra* note 3 (MacKay), at 104. The other article referred to at the end of the passage is A. Wayne MacKay, "The Supreme Court of Canada and Federalism: Does / Should Anyone Care Anymore?" (2001) 80 Can Bar Rev. 241.

While my comments about the role of the Supreme Court of Canada (and by analogy other courts and administrative decision-makers) can certainly be debated, few would challenge the larger policy role played by courts and administrative agencies since the *Charter*'s arrival in 1982. The importance of focusing on practical impacts on the lives of real people when engaging in *Charter* interpretation, cannot be over stated. That is clearly true in defining the scope of freedom of association generally and in the specific context of this litigation.

As part of the broad and purposive interpretation of the *Charter of Rights* there has also been an increased use of international law precedents. In particular, the courts have been considering Canada's international obligations as a guide to the proper interpretation of *Charter* rights. This is particularly significant in the labour law context and in regard to defining the scope of freedom of association in Canada. In the early days of *Charter* interpretation the use of international law as a source of interpretation was less frequent and varied according to the judge involved. In the *Labour Trilogy* only then Chief Justice Dickson, dissenting in the *Alberta Reference*, made serious reference to international law sources, while the other Justices largely ignored it.[6] In the more expansive phase of freedom of association interpretation, Justice Bastarache in *Dunmore*[7] (speaking for the Majority) and the Majority in *Health Services*[8] made extensive use of international law to produce a more expansive interpretation of section 2(d) of the *Charter*. This growing use of international law sources emphasizes the value of the expert Opinion provided by Professor Macklem in this litigation in regard to the International Labour Organization (ILO) and international law. I will leave it to him to elaborate this aspect of *Charter* interpretation.

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[6] The *Labour Trilogy* refers to three concurrently released appeals: *Reference Re Public Relations Act (Alta.)*, [1987] 1 S.C.R. 33 (hereafter *Alberta Reference*), *PSAC v. Canada*, [1987] 1 S.C.R. 424 (hereafter *PSAC*) and *RWDSU v. Saskatchewan*, [1987] 1 S.R.C. 460 (hereafter *RWDSU*).

[7] *Dunmore v. Ontario (AG)*, 2001 SCC 94, [2001] 3 S.C.R. 1016.

[8] *Health Services and Support v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391.

B. Charter Values Analysis

In addition to direct application of *Charter* rights another form of *Charter* analysis has emerged under the banner of *Charter* values. It first emerged in the context of judges applying the common law and the need to consider *Charter* values when doing so.[9] This analysis is both more flexible and open-ended but also more discretionary than a direct *Charter of Rights* analysis. There are also some uncertainties about what the remedies should be for a violation of *Charter* values. In the common law context it could be the revision of a common law rule to comply with the relevant *Charter* values, as the development of the common law is within judicial authority. The remedial implications in the administrative law context are less clear.

More recently a *Charter* values analysis has emerged in respect to reviewing exercises of administrative discretion, which also violate *Charter* values. Rather than challenging such alleged violations by a formal *Charter of Rights* analysis, an alternative is to engage in a *Charter* values analysis under the banner of administrative rather than constitutional law. The standard is one of administrative reasonableness, rather than the stricter section 1 reasonable limits analysis under the *Charter of Rights*. This merger of administrative and constitutional law is part of the collapsing of the traditional public law silos which I have explored elsewhere.[10]

The leading case of this *Charter* values form of analysis within administrative law is *Doré* in which the distinctions between a *Charter of Rights* section 1 reasonable limits review and a more flexible administrative reasonableness review are explored.

> Today, the Court has two options for reviewing discretionary administrative decisions that implicate *Charter* values. The first is to adopt the *Oakes* framework, developed for reviewing laws for compliance with the Constitution. This undoubtedly protects *Charter* rights, but it does so at the risk

[9] *Hill v. Church of Scientology,* [1995] 2 S.C.R. 1130.
[10] *Supra* note 3 (MacKay).

> of undermining a more robust conception of administrative law. In the words of Prof. Evans, if administrative law is bypassed for the *Charter*, "a rich source of thought and experience about law and government will be overlooked" (p. 73). The alternative is for the Court to embrace a richer conception of administrative law, under which discretion is exercised "in light of constitutional guarantees and the values they reflect" (*Multani*, at para. 152, *per* LeBel J.). Under this approach, it is unnecessary to retreat to a s. 1 *Oakes* analysis in order to protect *Charter* values. Rather, administrative decisions are *always* required to consider fundamental values. The *Charter* simply acts as "a reminder that some values are clearly fundamental and . . . cannot be violated lightly" (Cartier, at p. 86). The administrative law approach also recognizes the legitimacy that this Court has given to administrative decision-making in cases such as *Dunsmuir* and *Conway*. These cases emphasize that administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise. Integrating *Charter* values into the administrative approach, and recognizing the expertise of these decision-makers, opens "an institutional dialogue about the appropriate use and control of discretion, rather than the older command-and-control relationship" (Liston, at p. 100).[11]

There are complexities with this form of analysis as there are with any balancing of complex social issues. As the above passage indicates, *Doré*'s *Charter* values analysis is appropriate in the context of exercises of discretion in implementing a statutory mandate. One of the complexities of this form of analysis is determining the relevant *Charter* values. Unlike the *Charter of Rights* itself, there is no specific text to refer to directly, but these values should be implicit if not explicit in the *Charter*. The kind of values that come to mind in this freedom of association context, include – dignity, autonomy, democracy and equality. The value of equality is particularly relevant in the health sector, where issues of gender and related vulnerabilities are present. In part IV of this Opinion I will return to the centrality of equality and related *Charter* values.

Like any analysis, *Charter* values analysis also has its limits. Thus any challenge to the validity of the legislative provisions themselves would have to come in the form of a direct *Charter of Rights* challenge.

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[11] *Doré v. Barreau du Quebec*, 2012 SCC 12, [2012] 1 SCR 395 at para. 34.

I explored this point in an earlier publication and attempt to distinguish between the *Doré* kind of reasonableness analysis and the more formal section 1 of *Charter* analysis.

> The decisions made by administrative bodies are fundamentally different from statutes and other forms of law, and therefore the framework implemented when reviewing these two kinds of decisions should also be different. Specifically, the section 1 Charter framework was designed to balance broad social issues against constitutional rights. In contrast, administrative decisions that implicate the Charter are made with regard to balancing the interests of private parties. While the rigid section 1 Charter framework may well be suited to balancing the importance of rights like freedom of religion and the need to protect people's security, it does not necessarily lend itself to a discretionary decision made with reference to a dispute between an employer and employee, on matters, such as freedom of religion. The two types of balancing are different in nature.[12]

As is evident in the freedom of association cases reviewed in the next section of this Opinion, issues of legislative deference and determining the proper roles of courts and legislatures in labour relations matters are vital. I shall now turn to a review of the Supreme Court of Canada jurisprudence on freedom of association.

III. FREEDOM OF ASSOCIATION IN THE LABOUR CONTEXT

A. Freedom to Associate and Related Activities

Freedom of association and its related activities raise complex issues which have challenged and divided the Justices of the Supreme Court of Canada over the last thirty years. This has led to major precedents being overturned within a couple of decades and an ebb and flow in the scope of freedom of association. With the possible exception of the definition of equality in section 15 of the *Charter of Rights*, no other right has been as contested and divisive.

Giving shape to freedom of association implicates some of the basic tensions in *Charter* interpretation. These include issues of deference to the legislature, the policy role of the courts in labour law, the line between individual and collective rights and distinctions between the public

[12] *Supra* note 3 (MacKay), at 125.

and private sectors of Canadian society. These various tensions are revisited as political and economic conditions change and the personnel of the Supreme Court of Canada shifts. In light of this complexity it is not surprising that there are still many unanswered questions about the nature and scope of freedom of association. In an attempt to provide some clarity about how this elusive section 2(d) *Charter* right has been treated by the Supreme Court of Canada, I shall explore some of the leading cases in different categories and time periods.

1. Narrow Roots: Early Jurisprudence and Focus on Individual Not Collective Rights

The roots of freedom of association under the *Charter*, were planted in three 1987 decisions decided concurrently and referred to as the *Labour Trilogy*.[13] The most prominent case of this Trilogy was the *Alberta Reference*[14] in which the Majority adopted a narrow interpretation of section 2(d) of the *Charter of Rights* by focusing on the rights of the individual and not the collective. The essence of this case was that only those activities which were lawful if done by an individual could be protected in association with others. There was a need to find an individual analogue for any claimed collective right. If one could not be found then the collective right was not protected. The critical example is the right to strike, for which there was held to be no individual analogue.

Justice Sopinka in *PIPSC*[15] speaking as part of the Majority in a close 4/3 split, holds that freedom of association under the *Charter* did not embrace access to a statutory scheme of collective bargaining. He summarized the essential tenets of these earlier and restrictive cases as described by Professor Judy Fudge in the following words.

The majority in PIPSC adopted a decontextualized and abstract approach to the

[13] *Supra* note 6.
[14] *Reference Re Public Service Employee Relations Act*, [1987] 1 S.C.R. 313.
[15] *Professional Institute of the Public Service of Canada v. N.W.T.*, [1990] 2 S.C.R. 367.

> interpretation of freedom of association and accepted McIntyre J.'s position that freedom of association should only protect those activities that an individual can do lawfully. Justice Sopinka distilled the scope of section 2(d) to four propositions:
>
> (1) s. 2(d) protects the freedom to establish, belong to and maintain an association;
>
> (2) it does not protect an activity solely on the ground that the activity is foundational or essential to the association;
>
> (3) it protects the exercise in association of the constitutional rights and freedoms of individuals; and
>
> (4) it protects the exercise in association of the lawful rights of individuals.[16]

The dissenting voice in this conservative approach to freedom of association was the late Chief Justice Dickson in the *Alberta Reference* who was willing to embrace collective bargaining rights, based in part on a rejection of a rather artificial distinction between rights and freedoms within section 2 of the *Charter of Rights*.

> Section 2 of the Charter protects fundamental "freedoms" as opposed to "rights". Although these two terms are sometimes used interchangeably, a conceptual distinction between the two is often drawn. "Rights" are said to impose a corresponding duty or obligation on another party to ensure the protection of the right in question whereas "freedoms" are said to involve simply an absence of interference or constraint. This conceptual approach to the nature of "freedoms" may be too narrow since it fails to acknowledge situations where the absence of government intervention may in effect substantially impede the enjoyment of fundamental freedoms (e.g., regulations limiting the monopolization of the press may be required to ensure freedom of expression and freedom of the press).[17]

As we shall see, some aspects of the *Labour Trilogy* do get overturned in later cases and the dissenting voice of the late Chief Justice Dickson emerges as the law on aspects of freedom of association. On the important question of the right to strike, its rejection in the early cases has not been explicitly overturned. This issue is again before the Supreme Court of Canada in *R. v.*

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[16] Judy Fudge, "Freedom of Association" in E. Mendes and S. Beaulac eds., *Canadian Charter of Rights and Freedom* (5th ed.) (Toronto: LexisNexis, 2013) at Chp. 11, pp. 528-561, at 537.

[17] *Supra* note 14, at 61 (*Alta. Ref.*). Professor Dianne Pothier also prefers the approach of the late Chief Justice Dickson in the early cases. Dianne Pothier, "Twenty Years of Labour Law and the *Charter*" (2002) 40 Osgoode Hall LJ 369.

Saskatchewan Federation of Labour.[18] Professor Fudge suggests that some of the roots of the *Labour Trilogy* run deep and even in the face of international commitments and changing judicial attitudes, constitutional protection of the right to strike may still prove elusive.

> The observations of the supervisory committees of the ILO are clear that the right to strike is an essential component of freedom of association, and, as a signatory to Convention 87; Canada is bound to respect the interpretation of the supervisory committees. However, given the current divisions on the Court, the influence of international labour rights on the Supreme Court of Canada jurisprudence is unpredictable.[19]

2. Incremental Expansion: Dunmore and Health Services

The move towards a broader approach to freedom of association was a slow and incremental one. While the right to establish and belong to an association was well established in the labour context in *Delisle v. Canada*,[20] it was held to not include an obligation on the public employer to allow access to a particular statutory regime. Justice Bastarache writing for the Majority in the *Delisle Case* held that section 2 of the *Charter* does not impose a positive obligation on the government to include employees (such as the RCMP) in a particular regime, except in very exceptional circumstances. Because the RCMP were able to form an employee association this was seen as an adequate protection of freedom of association. There was also no employer interference. Professor Peter Hogg and others have suggested that *Delisle* is difficult to reconcile with later decisions such as *Dunmore*.[21]

Dunmore v. Ontario in the context of the exclusion of agricultural workers from the trade

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[18] *R v. Saskatchewan Federation of Labour*, 2013 SKCA 43. This case involved a constitutional challenge to two pieces of legislation: *The Public Service Essential Services Act*, S.S. 2008, c. P-42.2 (the "*Essential Services Act*"), and *The Trade Union Amendment Act, 2008*, S.S. 2008, c. 26 and c. 27 (the "*TUA Amendment Act*"). Several unions saw these Acts as substantially interfering with *Charter* protected freedoms, including, for this purpose, guarantees of association in section 2(d) of the *Charter*.

[19] *Supra* note 16, at 555.

[20] [1999] 2 S.C.R. 989.

[21] P.W. Hogg, Constitutional Law of Canada (2014 Student Edition) (Toronto: Carswell, 2014), at 44-4 and 44-5.

union structure, offered a fresh perspective on the freedom guaranteed by section 2(d) of the *Charter* and a departure from the earlier conservative and individualistic approach to freedom of association. Justice Bastarache grounded his analysis in the reasoning of the late Chief Justice Dickson and embraced collective as well as individual rights.

> **As discussed by Dickson C.J. in the Alberta Reference, supra, such activities may be collective in nature, in that they cannot be performed by individuals acting alone. The prohibition of such activities must surely, in some cases, be a violation of s. 2(d)** (at p. 367):
>
> > There will, however, be occasions when no analogy involving individuals can be found for associational activity, or when a comparison between groups and individuals fails to capture the essence of a possible violation of associational rights... . The overarching consideration remains whether a legislative enactment or administrative action interferes with the freedom of persons to join and act with others in common pursuits. The legislative purpose which will render legislation invalid is the attempt to preclude associational conduct because of its concerted or associational nature.
>
> This passage, which was not explicitly rejected by the majority in the Alberta Reference or in PIPSC, **recognizes that the collective is "qualitatively" distinct from the individual: individuals associate not simply because there is strength in numbers, but because communities can embody objectives that individuals cannot. For example, a "majority view" cannot be expressed by a lone individual, but a group of individuals can form a constituency and distill their views into a single platform**. (emphasis added)[22]

The significance of the departure in *Dunmore* is further emphasized by the fact that Justice Bastarache was also willing to impose a positive obligation on Government to enact legislation. Unlike in *Delisle*[23], he concludes that this is one of the exceptional cases that requires positive action to give effect to section 2 *Charter* rights. Professor Fudge underscores some of the elements of the new approach in *Dunmore*.

> Although Bastarache J. took care to align the reasons in Dunmore with the Supreme Court's earlier freedom of association decisions, the case marked a major change in direction. Unlike previous majority decisions, Bastarache J.

[22] *Supra* note 7, at para. 16.
[23] *Supra* note 20.

> referred to international human rights law as support for his assertions that some fundamental labour rights are collective and that under-inclusion, or the failure to protect, can constitute an infringement of freedom of association. He also adopted a contextual approach to interpreting section 2(d), emphasizing the history of labour relations in Canada and the important role that unions have played in Canadian society.[24]

The shift that was implicit in *Dunmore* became more explicit in *Health Services*[25], which overturned important aspects of the *Labour Trilogy*. The factual context in *Health Services* was an attempt by the British Columbia Government to deliver health services more efficiently and rein in the growing costs of health care. By way of legislation, the Government attempted to make this change and the legislation was challenged as violating freedom of association, by interfering with collective agreements and restricting the collective bargaining process. The process of collective bargaining was accepted as part of the section 2(d) *Charter* right but the Court was quick to emphasize that it was the collective bargaining process and not the substantive fruits of the process that are protected.[26]

Other parts of *Health Services* are quite broad in their scope and clearly expand the scope of freedom of association in Canada. The Court states:

> The scope of the right to bargain collectively ought to be defined bearing in mind the pronouncements of *Dunmore*, which stressed that s. 2(*d*) does not apply solely to individual action carried out in common, but also to associational activities themselves. The scope of the right properly reflects the history of collective bargaining and the international covenants entered into by Canada. Based on the principles developed in *Dunmore* and in this historical and international perspective, the constitutional right to collective bargaining concerns the protection of the ability of workers to engage in associational activities, and their capacity to act in common to reach shared goals related to work- place issues and terms of employment. In brief, the protected activity might be described as employees banding together to achieve particular work-related objectives.[27]

In Professor Peter Hogg's view the Supreme Court of Canada goes too far in *Health*

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[24] Supra note 16, at 542.
[25] *Health Services and Support – Facilities Subsector Bargaining Assn v. British Columbia*, 2007 SCC 27, [2007] 2 SCR 391.
[26] *Ibid.*, para. 29 and implicitly in paras. 66, 68, 89 and 111.
[27] *Ibid.* at para. 89.

Services in giving an enlarged role to courts in labour relations matters and puts too heavy a burden on governments to justify offending legislation under section 1 of the *Charter of Rights*.[28] However Professor Hogg does recognize that the test is one of "substantial interference" with the collective bargaining process and this is a point that is explicitly stated in *Health Services* as follows:

> In summary, s. 2(*d*) may be breached by government legislation or conduct that substantially interferes with the collective bargaining process. Substantial interference must be determined con- textually, on the facts of the case, having regard to the importance of the matter affected to the collective activity, and to the manner in which the government measure is accomplished. Important changes effected through a process of good faith negotiation may not violate s. 2(*d*). Conversely, less central matters may be changed more summarily, without violating s. 2(*d*). Only where the matter is both important to the process of collective bargaining, and has been imposed in violation of the duty of good faith negotiation, will s. 2(*d*) be breached.[29]

Apart from the fact that both *Health Services* and the factual context for this litigation involve the health sector there are other possible similarities. One of the goals of collective bargaining cited by the Court in *Health Services* is the promotion of "workplace democracy."

3. Fraser: Retreat and Reversal

It is quite clear that the recent decision of the Supreme Court of Canada in *Fraser v. Ontario (A.G.)*[30] represents at least a retreat and in some respects a reversal, from the expansion of freedom of association discussed in the previous section. To what extent *Fraser* weakens the broader approach to freedom of association in *Health Services* is difficult to assess, because the extent of the disagreement among the members of the Court about the proper scope of freedom of association, interferes with the cogency of the reasons.[31] While Justice Rothstein in dissent

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[28] *Supra* note 21, at 44-13.
[29] *Supra* note 25, at para. 109.
[30] *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 SCR 3.
[31] *Supra* note 16, at 546.

would like to overturn *Health Services*, the three sets of Majority reasons uphold it.

Professor Hogg emphasizes some of the challenged logic implicit in *Fraser* in the following passage.

> In describing the Supreme Court decision in Fraser, it is perhaps easiest to start with the dissenting opinion of Abella J. As explained, she followed the same straightforward route as the Ontario Court of Appeal. She agreed that, after *Health Services* created a "completely different jurisprudential universe", the Agricultural Employees Protection Act could no longer be upheld. The new constitutional requirement for a statutory duty on the part of the employer to bargain in good faith with the representatives of the employees' association was "missing in action", and without that piece the Act was unconstitutional. How did the other judges avoid this seemingly ineluctable conclusion? The answer is: by three different routes.[32]

The Majority Justices claim to be following *Health Services* but in a rather constrained way. The threshold for violating freedom of association is that there be a "significant impairment" to meaningful negotiations, or that the challenged laws or actions would make such negotiations "impossible." The following passage from Fraser commenting on Health Services expresses this view.

> **The Court in *Health Services* emphasized that s. 2(*d*) does not require a particular model of bargaining, nor a particular outcome. What s. 2(*d*) guarantees in the labour relations context is a meaningful process.** A process which permits an employer not even to consider employee representations is not a meaningful process. To use the language of *Dunmore*, it is among those "collective activities [that] must be recognized if the freedom to form and maintain an association is to have any meaning" (para. 17). Without such a process, the purpose of associating in pursuit of workplace goals would be defeated, resulting in a significant impairment of the exercise of the right to freedom of association. One way to interfere with free association in pursuit of workplace goals is to ban employee associations. Another way, just as effective, is to set up a system that makes it impossible to have meaningful negotiations on workplace matters. Both approaches in fact limit the exercise of the s. 2(*d*) associational right, and both must be justified under s. 1 of the *Charter* to avoid unconstitutionality .(Emphasis added) [33]

The decision in *Fraser* is much criticized in academic circles and Professor Judy Fudge

[32] *Supra* note 21, at 44-11.
[33] *Supra* note 30, at para. 40.

provides a good example of this critique in the following excerpts.

> Not only do the four sets of reasons in Fraser signal growing judicial discord over a period of four years, they mark a shift both in the tone of decision-making and the direction of the Court's freedom of association jurisprudence since Dunmore and Health Services. A large part (48 paragraphs out of a judgment that is 118 paragraphs long) of the majority judgment in Fraser, which was written by McLachlin C.J.C. and LeBel J., who were also the authors of the majority decision in Health Services, is taken up by a defence of the majority judgment in Health Services as a legally valid and binding precedent. In his concurring decisions, Rothstein J. advocated that Health Services be overturned. Moreover, he did so despite the fact that none of the parties asked the Court to overrule Health Services. This disagreement suggests a brake on, but not a reversal of, the development of constitutional protection for collective bargaining. It has also resulted in a highly ambiguous doctrine when it comes to collective bargaining activities that are protected under the Charter. (Notes omitted)[34]

At the end of the analysis, Professor Fudge concludes that the ruling in *Health Services* survives the assault in Fraser but perhaps in a weakened state.

> Even though Fraser seems to have weakened the right to collective bargaining that was articulated in Health Services, the right has survived. Moreover, the scope of freedom of association defended by the majority is substantially wider than what is advocated by Rothstein J. Chief Justice McLachlin and LeBel J. refused a narrowly individualistic reading of section 2(d) and they rejected Rothstein J.'s distinction between negative freedoms and positive duties as overly rigid. They also disputed his claim that the Court should show greater deference in the labour relations context, arguing that deference to the legislature should not play a part "in defining the nature and scope of a constitutional right, but within the margin of appreciation" in determining whether the violation is for a legitimate reason and the means taken are proportionate to achieving it. They systematically responded to and dismissed each of the specific criticisms Rothstein J. lodged against the reasons they gave in Health Services for overturning the Labour Trilogy. (Notes omitted)[35]

B. Freedom *from* Compelled Association Considered in Individual Context

The issue of freedom from compelled association first arose in the context of *Lavigne v.*

[34] *Supra* note 16, at 547.
[35] *Supra* note 16, at 551.

Ontario Public Service Employees Union.[36] This was a case of an "agency shop" in which Mr. Lavigne as an individual did not have to join a union to work at the community college but he did have to pay union dues. This arrangement sometimes known as the Rand formula avoids the problem of the free rider, whereby a person gets all the benefits of union membership without paying any dues. While Mr. Lavigne did not object to paying the dues, he did object to some of these funds going to the New Democratic Party and causes such as pro choice, with which he disagreed. By a narrow majority the Supreme Court of Canada holds that freedom of association in section 2(d) of the *Charter of Rights* includes the right to not associate. The Justices of the Court were unanimous that the "agency shop" provision was valid on these facts, although they reached this conclusion by different results.

Justice LaForest for the Majority was clear in his views on the need to include freedom from compelled association within the guarantees of section 2(d) of the *Charter*.

> It is clear that a conception of freedom of association that did not include freedom from forced association would not truly be "freedom" within the meaning of the Charter. This brings into focus the critical point that freedom from forced association and freedom to associate should not be viewed in opposition, one "negative" and the other "positive". These are not distinct rights, but two sides of a bilateral freedom which has as its unifying purpose the advancement of individual aspirations….[37]

It is important to note that the *Lavigne* case was a case concerned with the individual rights of Mr. Lavigne and not broader collective rights. The opportunity to consider rights of non association in a collective context emerged in *R. v. Advance Cutting & Coring Ltd.*[38] However, it was not seized and the Court also approached this case as an individual rights case.

> This Court has adopted the view that, although the right of association represents a social phenomenon involving the linking together of a number of persons, it belongs first to the individual. It fosters one's self-fulfilment by allowing one to

[36] [1991] 2 S.C.R. 211, 81 D.L.R. (4th) 545 (S.C.C.).
[37] *Ibid.* at para. 224. He supported this conclusion by reference to Article 20 of the *U.N. Universal Declaration of Human Rights*, 1948.
[38] 2001 SCC 70, [2001] 3 S.C.R. 209.

> develop one's qualities as a social being. The act of engaging in legal activities, in conjunction with others, receives constitutional protection. The focus of the analysis remains on the individual, not on the group.[39]

In *Advance Cutting* the Supreme Court of Canada had to consider the constitutional validity of a unique form of a "union shop" set up by legislation regulating the construction industry in Quebec. The statute required all workers to join one of five unions expressly identified in the legislation. In another close ruling the Supreme Court of Canada upheld the legislation by a majority of 5 to 4. Once again there were many different streams of reasoning. Seven of the nine Justice adopted the test for a violation of section 2(d) in this context, first proposed by Justice McLachlin (as she then was) in *Lavigne*.[40] The essence of the test is that being compelled into "ideological conformity" by state enforced association is a violation of section 2(d) of the *Charter of Rights*. The Justices did not agree on the evidence needed to meet this "ideological conformity" test.

A Majority of the Court held that the test for violation was not met in *Advance Cutting*, this case as there was no evidence of imposed "ideological conformity."

> In this context, there is simply no evidence to support judicial notice of Quebec unions ideologically coercing their members. Such an inference presumes that unions hold a single ideology and impose it on their rank and file, including the complainants in this case. Such an inference would amount to little more than an unsubstantiated stereotype.[41]

Justice Bastarache in dissent did not agree with the above analysis but concludes that mandatory union membership was a violation *per se* and did impose "ideological conformity."

> I do not agree that McLachlin J.'s opinion in Lavigne need be interpreted so restrictively. In my view, the interpretation of ideological conformity must be broader and take place in context. In this case, this context would take into account the true nature of unions as participatory bodies holding political and economic roles in society which, in turn, translates into the existence of

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[39] *Ibid.* at para. 175.
[40] *Supra* note 36.
[41] *Supra* note 38 at para. 231.

> ideological positions. To mandate that an individual adhere to such a union is ideological conformity.[42]

In *Advance Cutting*[43] the members were allowed to vote for their choice of union.

Justice Bastarache was in dissent and the Majority required evidence of imposed "ideological conformity" apart from just being required to join a particular union.

C. Free Choice and Voluntary Association as a Group and Individual Right

Justice Bastarache writing on behalf of the majority of the Supreme Court of Canada in *Delisle*, holds that "s. 2(d) of the *Canadian Charter of Rights and Freedoms* protects RCMP members against any interference by management in the establishment of an employee association."[44] However, he went on to state that "this right exists independently of any legislative framework."[45] Professor Judy Fudge is highly critical of the suggestion that these rights exist apart from the legislative framework and suggests that this conclusion is "oblivious to labour relations."[46] Justice Bastarache also concludes that the *Delisle* situation is not one of the exceptional section 2 cases that require positive government action to give the RCMP members' access to the general trade union structure. The independent association was, in the Court's view, an acceptable alternative vehicle for exercising the members freedom of association rights.

More recently issues of freedom of association have again arisen in the context of a RCMP bargaining structure. In *Mounted Police Assn. of Ontario*[47] (which is an independent private association of the RCMP) the applicants challenged the exclusion of the RCMP from the

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[42] *Supra* note 38, at para. 3.
[43] *Supra* note 38.
[44] *Supra* note 20, at 106.
[45] *Ibid.*
[46] *Supra* note 16, at 538.
[47] *Mounted Police Assn. of Ontario v. Canada (Attorney General)*, 2012 ONCA 363, 292 OAC 202. This case reversed *Mounted Police Assn. of Ontario v. Canada (A.G.)*, 2009 OJ No. 1352.

Public Service Staff Relations Act and the establishment of the Staff Relations Representative Program as an alternative. This is an internal program to represent workplace issues to management, which has been in place since 1974, and was formalized through an amendment to the *Royal Canadian Mounted Police Regulations (Regulations)* in 1989. Through this program, representatives called Staff Relations Representatives (SRRs) are responsible to all employees for all concerns and requests, and engage in discussions with management. They are democratically elected, and serve for two years at a time, but have no decision-making abilities. Alongside this program are independent associations, but they cannot make representations to management and their members are barred from acting as SRRs, while they are members of the independent association.

The constitutional challenge alleges that the program, as it exists, does not allow for collective bargaining by associations voluntarily chosen and freely organized. Instead, some associational activities are carried out by voluntary associations, including the appellant organizations, and the collective bargaining processes by another— the employer organized and maintained Staff Relations Representative Program. This divides fundamental aspects of the freedom to associate from each other. This division of associational activities between the two groups is alleged to be an infringement of the *Charter* protected freedom of association in section 2(d).

The Ontario Superior Court of Justice found that there was a substantial interference with associational activities and thereby a violation of s. 2(b) of the *Charter*. This was decided on two counts: the Staff Relations Representative Program was neither independently chosen nor created, and the associational activities performed by the SRRs cannot be considered collective bargaining. In the interim between the trial level decision and the Court of Appeal decision,

Fraser[48] was decided, which the Court of Appeal relied on to overturn the court below. Because of the programs already in place, the Court of Appeal held that the government was not constitutionally obliged to collectively bargain with any independent associations, including the appellant association.

This case, which has been argued but not decided by the Supreme Court of Canada, relates to the question of collective voluntariness. Collective voluntariness includes the freedom not to associate, and the collective right to associate, and is thus conceptually novel. What *Mounted Police* asks is whether there is any collective freedom to associate at all, if the association is not voluntarily chosen.

It is also interesting to note that the Mounted Police Association succeeded at the trial level on the basis that the structure in place substantially interferes with their rights to collectively bargain, in violation of section 2(d) of the *Charter of Rights*. The decision of the trial court[49] was based upon *Health Services*[50] and the more expansive test of "substantial interference." After the trial decision the Supreme Court of Canada rendered its decision in *Fraser* and the Ontario Court of Appeal applied the apparently stricter test of whether the challenged structure made it "impossible" to engage in collective bargaining. The Appeal Court concludes that it did not make it "impossible" and there was therefore no violation. This appears to suggest that *Fraser* does set a higher standard for finding a violation of the *Charter* than *Health Services*, in spite of the protests from the Majority Justices in *Fraser*, that their ruling in *Health Services* was neither reversed nor diminished. The tension between these two cases is discussed in more depth in the previous section.

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[48] *Supra* note 30.
[49] *Mounted Police Association of Ontario v. Canada* (2009), 96 O.R. (3d) 20 (S.C.J.).
[50] *Supra* note 25.

Mounted Police[51] is dealt with in this separate category because it deals with the issue of compelled non association from the perspective of both individual and collective rights. This fresh perspective leads to new questions about the content of freedom of association in section 2(d) of the *Charter*. It directly raises questions about the importance of the voluntary selection of bargaining agents. Prior to this, the right to choose an association (or no association) has only been investigated from an individual rights perspective. The special nature of collective rights has now been affirmed by the Supreme Court of Canada in cases, such as, *Dunmore*[52] and *Health Services.*[53]

Freedom of association guarantees the ability to join independent associations, and the ability to collectively bargain as a derivative right. This is confirmed in Supreme Court jurisprudence. It seems problematic that it would be constitutional to have one (non-independent) organization make the representations, and the freely chosen associations not be allowed to make representations. But only if you consider both the individual and collective aspects does it start to become apparent why this may violate freedom of association. The guarantees belong together and attach to the group, not just the individual. The group must be independent, freely chosen, and make representations, all within the same body, to be properly considered a constitutionally acceptable bargaining agent. So, the freedom to associate includes both the ability to create an association and for that association to participate in the related, protected associational activities.

Earlier cases such as *Advance Cutting*[54] and *Lavigne,*[55] only considered voluntariness, the correlated negative right to not associate, from the perspective of the individual. The collective

[51] *Supra* note 47.
[52] *Supra* note 7.
[53] *Supra* note 25.
[54] *Supra* note 38.
[55] *Supra* note 36.

aspects of the right were not investigated. For these reasons, *Advance Cutting*, does not shed too much light on the Nova Scotia context at issue in this litigation.

The other reason for giving *Mounted Police* more attention, even though the Supreme Court of Canada has not ruled on it yet, is that it does appear to have many parallels to the Nova Scotia situation at issue in this litigation. The issues of voluntariness and choice seem central to the challenges against the *Health Authorities Act,*[56] as do the merger of individual and collective rights to both association and non association. It will be interesting to see how the Supreme Court of Canada decides *Mounted Police* in terms of both rights to not associate and collective rights of free association.

IV. EQUALITY AND OTHER VALUES IN RELATION TO THE SECTION 2(d) CHARTER CONTEXT

In part II of this Opinion I referred to the need to define the relevant *Charter* values for the purposes of a *Doré* style Charter values analysis. Professor Judy Fudge suggests that a vibrant conception of freedom of association should take account of important Charter values including – autonomy, democracy, dignity and equality.[57] In many of the freedom of association cases there are also issues of equality, both in terms of a broader value and a possible section 15 *Charter of Rights* claim. The Supreme Court of Canada has been fairly dismissive of a parallel section 15 *Charter* claim in freedom of association cases and this has produced much academic criticism.

One of the harshest critics of how the Supreme Court of Canada has handled the equality aspects of freedom of association cases is Professor Judy Fudge, who in an article on this point described the judicial approach to equality in these cases as "dismissive."[58] I will illustrate her

[56] S.N.S. 2014, c. 32.
[57] *Supra* note 16, at 545.
[58] Judy Fudge, "Conceptualizing Collective Bargaining under the *Charter*: The Enduring Problem of Substantive Equality" (2008) 42 S.C.L.R. (2d) 213-247.

views on this matter by quoting passages from her critique of the treatment of the equality claim in *Health Services*.[59]

> Despite the fact that it was not necessary for the Supreme Court of Canada to address the section 15 claim, since the appellant unions were successful under section 2(d), the Court provided a cursory and disappointing discussion of the equality argument. The Supreme Court signalled its refusal to consider seriously the equality claim when it refused LEAF's motion to intervene. The majority dismissed the appellant unions' section 15 claim in six paragraphs. Despite the pain inflicted by Bill 29 on health care workers, the Court refused to depart from the view of the trial court judge that the effects of the legislation did not constitute discrimination under section 15. The Court concluded:
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> > ... the distinctions made by the Act relate essentially to segregating different sectors of employment, in accordance with the long-standing practice in labour regulation of creating legislation specific to particular segments of the labour force, and do not amount to discrimination under s. 15 of the Charter. The differential and adverse effects of the legislation on some groups of workers relate essentially to the type of work they do, and not to the persons they are. Nor does the evidence disclose that the Act reflects the stereotypical application of group or personal characteristics. Without minimizing the importance of the distinctions made by the Act to the lives and work of affected health care employees, the differential treatment based on personal characteristics required to get a discrimination analysis off the ground is absent here.[60]
>
> ...
>
> The Court's focus on combating stereotypes as the rationale for providing constitutional protection for equality rights enabled it to sever its analysis of the equality claim from its analysis of the freedom to associate despite the fact that it had earlier justified the latter as including a right to bargain collectively because it promotes the Charter value of substantive economic equality. Moreover, the Court's analysis ignored the extent to which labour legislation reflects and reinforces historical patterns of labour market discrimination and segregation. The "long standing practice in labour regulation of creating legislation specific to particular segments in the labour force" may be neutral on its face but it has profoundly disparate and disadvantageous impacts upon workers.[61]
>
> ...
>
> Although the Court invoked substantive equality as one of the Charter values that supported providing constitutional protection for the right to bargain collectively,

[59] *Supra* note 25.
[60] *Supra* note 58, at para. 52.
[61] *Ibid.* at para. 53.

> it did not develop the link between equality and the freedom to associate. In fact, the Court's dismissive treatment of the health care workers' equality claim suggests that substantive equality has little judicial purchase in the world of work.[62]

Not only should equality values and rights be taken more seriously in the world of work, but also it could assist the courts in giving a purposive and practically meaningful interpretation to freedom of association. This has particular relevance within the health sector as discussed in *Health Services* and in the Nova Scotia fact situation at issue in this litigation. Issues of gender, vulnerability and inequality play significant roles in the health sector, and interpreting and applying the concept of freedom of association in a way that is sensitive to these equality dimensions, would enhance the beneficial impact of the *Charter* on front line health care workers.

Professor Fudge is not alone in her displeasure with the Supreme Court of Canada's treatment of equality in conjunction with freedom of association claims. Professor Dianne Pothier is critical of how the Court avoided the section 15 equality claim in *Dunmore*, even while recognizing the vulnerability of agricultural workers, who were excluded from the trade union regime.[63] Another critic of the Court for its failure to link equality and freedom of association, is Professor Brian Langille who also focuses his analysis on *Health Services*.[64] He partly blames the weakness of section 15 itself which puts a heavy burden on the other sections of the *Charter*, including section 2(d).

> The basic idea of equality was designed to carry important freight. The Court's failure to make use of section 15 has required the transfer of that freight to section 2(d) and the construction of a detailed parallel system, adequate to its conception of the constitutional idea of freedom of association.[65]

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[62] *Ibid.* at para. 63.
[63] *Supra* note 17 (Pothier), at 396.
[64] Brian Langille, "The Freedom of Association Mess: How We Got Into It and How We Can Get out of It" (2009) 54 McGill LJ 177.
[65] *Ibid.* at 209.

Professor Langille also suggests that equality is the way out of the murky waters created by the freedom of association jurisprudence and that carefully considering the existing labour statutes would be an excellent starting point. He expresses this point as follows:

> The Canadian labour relations statutes have given expression to these constitutional rights for most workers. We can avoid all sorts of difficulties, including the incoherencies just noted, by taking this expression as our starting point and applying the idea of equality. We may not have a right to a particular instantiation of the freedom of association (as already noted, a study of the domestic systems of ILO members shows that there are many legitimate models), but once we have this instantiation for some, we must extend it to all unless there is a good reason not to do so.[66]

The need for the courts to pay closer attention to the domestic statutory framework as a source in freedom of association claims, is one of the matters considered in the next section of this Opinion. In summary, there are strong academic calls for a more nuanced interpretation of freedom of association and one that embraces other *Charter* rights and values. In particular the concept of equality is one that has been under valued and under utilized to date.

V. SUBSTANTIAL OR SIGNIFICANT INTERFERENCE BY DEPARTURE FROM NORMS – INCLUDING TRADITIONAL STATUTORY REGIME

While it is not my role to apply the freedom of association jurisprudence to the precise facts and statutory framework at issue in this litigation, I do wish to return to this factual context for this Opinion. Having perused the *Health Authorities Act*[67] and reviewed the basic facts in this challenge (largely through Mediator-Arbitrator, James Dorsey's preliminary ruling of November 19, 2014), it does appear that the challenged structure is a significant departure in how workers are linked with particular unions. Most noteworthy is the loss of the right to vote for a particular union of choice. This, on its face, appears to be a reduction in workplace democracy, which has

[66] *Ibid.* at 210-211.
[67] S.N.S. 2014, c. 32.

been identified as one of the important goals of freedom of association in cases such as *Health Services*. There also appear to be some suggestions of management interference implicit in the *Health Authorities Act* and according to *Delisle*[68] this could impinge on freedom of association.

Whether there is a violation of freedom of association in this Nova Scotia context is for the Mediator-Arbitrator, James Dorsey, to decide and perhaps ultimately for the courts. Similarly, whether, if a violation is found, there is a valid section 1 of the *Charter of Rights* justification, is for others to decide.

The traditional Nova Scotia process for dealing with these matters of union affiliation are handled under the *Trade Union Act* and the main agency for resolving disputes would be the Nova Scotia Labour Relations Board. When there is the kind of change and restructuring that is happening here, employees would normally be allowed to vote for the trade union they would like to represent them.

The *Health Authorities Act* diverges form this traditional process in several ways. The Mediator-Arbitrator, responsible to determine the bargaining agents for the consolidated Health Authority, is not given express authority to consider the employee wishes. Further, the Act limits the composition of bargaining units, and requires that the four bargaining units are province-wide. The Act does not follow the majoritarian principle and instead limits representation. In particular, the right to vote for the trade union of one's choice is removed.

In assessing the freedom of association implications of these changes, it is desirable to consider the extent to which the challenged provisions of the new structure depart from the traditional norms in these matters. Professor Judy Fudge makes some observations about where decision-makers should look for these norms.

... Essentially, there are two sources of labour law norms that the courts can turn

[68] *Supra* note 20.

> to in determining that the right to "associational collective activity in furtherance of workplace goals" is not merely a "paper right, but a right to a process that permits meaningful pursuit of those goals" -- domestic labour law and international labour law. In its fear of "constitutionalizing" a model of labour law, the majority of the Supreme Court has gone to the opposite extreme, eschewing any reference to existing legislation to assist it in determining whether the constitutional standard has been met. An alternative approach, such as that proposed by Abella J., would consider the prevailing model in order to identify the features needed to protect meaningful collective bargaining. As she noted, looking to what exists already in Canada does not imply "that there is no room for innovation in the modalities of the Canadian labour relations model". (Notes omitted)[69]

The above reference to the approach of Justice Abella is to her dissenting reasons in *Fraser*, where she states as follows:

> I acknowledge that different models of labour relations exist globally, some of which do not recognize the principle of majoritarian exclusivity (Clyde W. Summers, "Exclusive Representation: A Comparative Inquiry into a 'Unique' American Principle" (1998), 20 *Comp. Lab. L. & Pol'y J.* 47; Roy J. Adams, "Prospects for Labour's Right to Bargain Collectively After *B.C. Health Services*" (2009), 59 *U.N.B.L.J.* 85). These models, however, have been developed in entirely different historical contexts and systems of collective bargaining and have yet to be seriously road-tested in the Canadian context outside of the construction industry in Quebec. This is not to say that there is no room for innovation in the modalities of the Canadian labour relations model. But to "innovate" by eliminating a fundamental protection for the most vulnerable of workers is nullification, not innovation.[70]

Ironically, the Supreme Court of Canada has been more open to examining international law sources than domestic ones in many of the freedom of association cases to date. Justice Abella's idea of looking to the existing Canadian statutory structure in labour relations is a useful starting point. In the field of human rights the human rights codes and their interpretation by both courts and tribunals, have played a major role in shaping the concept of equality in section 15 of the *Charter*.[71]

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[69] *Supra* note 16, at 554.
[70] *Supra* note 30, at para. 351.
[71] *Andrews v. Law Society of B.C.*, [1989] 1 S.C.R. 143.

Looking not only at the provisions of the *Health Authorities Act*,[72] but also to the previous statutory structure in Nova Scotia, would be a useful way to assess the degree to which the challenged provisions depart from the established norms. This could prove very helpful in determining whether there is a significant impairment in the individual and collective rights to freedom of association and ultimately whether there is a violation of section 2(d) of the *Charter of Rights* in the context of this important Nova Scotia litigation.

I trust that this Opinion will provide some assistance to Mediator-Arbitrator, Mr. Dorsey, in resolving these complex freedom of association issues in the very compressed time frame that is available. I further hope that it can offer some guidance for him in engaging in an application and interpretation of the *Health Authorities Act* that is sensitive to the *Charter* rights and values that may be implicated in this important exercise of administrative authority.

[72] S.N.S. 2014 c. 32.

In the matter of an arbitration pursuant to *The Health Authorities Act*

This is Exhibit "B" referred to in the affidavit of Wayne MacKay, sworn before me on ____ December, 2014.

_____

Signature

Date Revised – September 16, 2014

Abbreviated

Curriculum Vitae

(Full version available on request)

Alexander Wayne MacKay

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Distinguished career achievements in teaching, research and leadership, focused on building an engaged and empowered community. Effectively communicates messages in the realms of education, law and human rights; leads with a personal touch, and inspires supportive relationships that promote principled decision making. An advocate for minority inclusion and advantage, modeling and linking innovative teams and relationships to support cultural strength and diversity, achievement and excellence.

Nationally recognized scholar, teacher and accomplished author in the areas of constitutional law, the Charter of Rights, human rights, privacy law and education law. Broad experience as a senior level media personality at local and national levels, providing high profile commentary in print, radio and television. Member of Order of Canada as of 2005.

Career Experience

Professor of Law July 1, 1979 - June 30, 2001; July 1, 2004 - Present
Dalhousie Law School

Nationally recognized career achievements in teaching law, including the receipt of numerous awards recognizing both teaching and research excellence at the regional and national level and appointed as member of the Order of Canada in 2005. A sought after public speaker, with high empathy for students, the ability to make complex subjects understandable, and strong connection to the audience. Especially noteworthy is the ability to inspire, open-mindedness and an abiding concern for the less privileged. Exceptional communicative ability and knowledge of public law, with prolific publication of scholarly material and professional contribution in meetings, consultations, representations, adjudication's, studies, seminars, workshops, symposia, conferences and lectures, extending across Canada and beyond.

Appointed Assistant Professor, July 1, 1979; Re-appointed and promoted July 30, 1982 to Associate Professor; Granted Tenure - July 1, 1984. Promoted to Full Professor - July 1, 1985. Subjects Taught: Constitutional Law, Administrative Law, Criminology, Public Law, Privacy Law, Charter Watch Seminar, Education Law Seminar.

- Chaired Saint Mary's University President's Council on *Promoting a Culture of Safety, Respect and Consent* (Rape Chant issue). (2014)
- Named among the Top 25 Most Influential Lawyers and Judges in Canada by *Canadian Lawyer Magazine*, August, 2013. (Based upon anti-cyberbullying work and advocacy).
- Recipient of the Queen Elizabeth II Diamond Jubilee Medal (1952-2012) for Distinguished Service, 2012.
- Appointed to John Yogis and Don Keddy Chair in Human Rights Law (July 5, 2012)
- Appointed Queen's Counsel by the Lieutenant Governor of Nova Scotia (May 11, 2009).
- Member of Order of Canada (appointed June, 2005 – inducted February, 2006).
- Instructor in "Intensive Summer Program for Judges" as part of Commonwealth Judicial Education Institute at Dalhousie Law School, June (2007 – 2014).
- Recipient of the Queen Elizabeth II Bicentennial Medal (1952 – 2002) for Distinguished Service, 2002.
- Recipient of Dalhousie University′s 2001 Alumni Award of Excellence for Teaching.
- Recipient of the Hon. Walter S. Tarnopolsky National Award for Achievements in Human Rights (Awarded by International Committee of Jurists), August, 2001
- Winner of William Paul McClure Kennedy Memorial Award for Outstanding Excellence in Teaching Law, (National Law Teacher Award), 1999.
- Winner of Association of Atlantic Universities Award for Excellence in Teaching, 1995.
- Winner of Canadian Association of Law Teachers' Award for Academic Excellence, 1994.

- Winner, Dalhousie Award for "Excellence in Teaching Law", 1993.
- Finalist for Dalhousie's "Excellence in Teaching Award", 1991 - 1992 and 2013 – 2014.
- Winner of class ring from class of 1984 as teacher who contributed most to the class.
- Designed and supervised a new Human Rights Student Placement course, linking the Nova Scotia Human Rights Commission and Dalhousie Law School, 1996 - 1999.
- Schools Law (summer program for teachers in Dalhousie's M.Ed. program), 1979 - 1995.
- Sent by Commonwealth Judicial Education Institute to Malawi, Africa to train Magistrates and Tribal Chiefs to be Judges under the New Malawi Constitution, June, 1995.
- Instructor at Banff Law Teaching Clinic held in Banff, Alberta, May, 1992, May - June, 1994 and Montreal, Quebec, May, 1993.
- Taught a segment on "Public Law and Legal Education" in Indigenous Black and Micmac Pre-Law Programme, August 1990, August 1991, and August 1992.
- Founding Director of the Law Programme for Indigenous Blacks and Micmacs at Dalhousie, 1989 - 1990. Interim Director of the Law Programme for Indigenous Blacks and Micmacs, 1991.
- Comparative Canadian and Australian Education Law, Monash University, Melbourne Australia July - August, 1988. (Scholar in Residence)
- Taught Comparative Constitutional Law segment in the Civil Law and Common Law Exchange Program (July, 1985 in Halifax, July, l986 in Sherbrooke and July, 1987 in Halifax).
- Delivered papers and presented to legal and lay audiences both within Nova Scotia and throughout Canada. Most frequent topics include: Charter of Rights, Privacy Law, Education Law, Criminal Law, Human Rights Law, Constitutional Law, discrimination, racism, prisoners' rights and cyberbullying.
- Delivered more than 190 such presentations.
- Wrote ten books, one hundred scholarly articles and delivered over one hundred and seventy five conference presentations as a legal scholar and author. Also prepared twenty-five articles for general audiences

President and Vice - Chancellor July 1, 2001 to June 30, 2004
Mount Allison University

Developed a people-oriented vision for the University focused on human capital as the foremost resource upon which to achieve academic excellence. Actively built strong relationships with strategic stakeholder groups, resulting in substantial increases in monetary support, innovative partnerships with government, universities, and the private sector; and widespread recognition and enhanced credibility for research and teaching achievements.

Executive Director Sept. 1, 1995 – June 30, 1998
Nova Scotia Human Rights Commission

Recipient of the Hon. Walter S. Tarnopolsky National Award for Achievements in the Field of Human Rights, 2001. (Awarded by International Committee of Jurists)

- Built a settlement and conciliation focus supporting a proactive approach to human rights issues.
- Led the settlement for *Wilson Hodder v. Government of Nova Scotia*, setting a national precedent on same sex benefits.
- Visible and high profile champion of human rights throughout the Province of Nova Scotia.
- Initiated programs toward the effective management of sexual harassment within schools, currently still in place.
- Nova Scotia representative on the Continuing Committee of Human Rights Officials, responsible for the implementation of Canada's international human rights obligations.

Lawyering & Consultation Sept. 1, 1980 - Present

Admitted Barrister and Solicitor of the Supreme Court of Nova Scotia, September 1, 1980. Appointed Queen's Counsel by Lieutenant Governor of Nova Scotia on May 11, 2009. Independent legal consultation and association with other lawyers and legal firms (specifically affiliated with Pink Larkin 1988 - 1995). Argued leading cases in Charter of Rights, education and constitutional law, including minority language rights in Nova Scotia, school closings, integrating the mentally disabled in schools, and the presumption of innocence in criminal law.

Also prepared reports and legal opinions for public and private agencies and served as adjudicator and decision maker in various labour, human rights and First Nations contexts. In 2013-2014 named among the Top 25 Most influential Lawyers and Judges in Canada by *Canadian Lawyer Magazine* (August, 2013) for his work and advocacy in response to the problems of bullying and cyberbullying in Canadian schools.

- Arbitrator under the *Arbitration Act* R.S.N.S. 1989, c.19 and the Boat Harbour Settlement Trust Agreement, in *Pictou Landing First Nation* v. *The Trustees of Boat Harbour Settlement Trust*. Disposed of by an Award/Decision rendered on July 9, 2014.
- Legal Opinion for Canadian Cancer Society on Constitutionality of proposed *Nova Scotia Manufacturing Licensing Fee Legislation*, March 20, 2014.
- Arbitrator under the *Commercial Arbitration Act* R.S.N.S. 1999 c. 5 in *Jonathan Beadle et al* v. *Pictou Landing Micmac*. Appointed by Mr. Justice Muise of the Nova Scotia Supreme Court in *Jonathan Beadle et al* v. *Pictou Landing Micmac* (2013 NSSC 25), by order dated March 15, 2013 and with the consent of the parties. Disposed of the Arbitration by a Preliminary Award/Decision rendered on August 6, 2013.
- Articles and Report on Inclusive Education cited with approval by Supreme Court of Canada landmark decision in *Moore* v. *British Columbia (Education)* 2012 SCC 61, at para. 34.

- Task Force Report on Cyberbullying that I authored and chaired, cited with approval by Supreme Court of Canada decision in *A.B.* v. *Bragg Communication Inc.* 2012 SCC 46, at paras 20-24.
- *An Inquiry into Bishop's University: A Report to the Faculty Council and the Corporation of Bishop's University (A Case Study on Challenges in University Governance),* Submitted in November, 2007, as Independent Commission of Inquiry (including Wayne MacKay (Chair), Ken McGovern and Anne Stalker).
- *Report of the Canadian Association of Law Teachers (CALT) Panel on Supreme Court Appointments (2005)*. Served as a contributing member of the Panel and prepared and wrote a portion of the Report. (June, 2005).
- *Canadian Foundation for Children, Youth and the Law v. Attorney General of Canada* (Ontario Supreme Court of Justice) - the challenge to corporal punishment as authorized by s. 43 of the *Criminal Code*. Prepared an affidavit and appeared as an expert witness in Toronto, July - August, 1999.
- Report to the Canadian Bar Association: *An Opinion to the Canadian Bar Association Standing Committee on Equality on Recommendations Concerning Judicial Discipline*, June, 1995.
- Report to the Commonwealth Judicial Education Institute: *Judicial Ethics: Exploring Misconduct and Accountability for Judges*, June, 1995.
- *C.A.R.A.L. v. A.G. Nova Scotia* (1990), 96 N.S.R. (2d) 284 (C.A.) and Constitutional consultant to Anne Derrick in her challenges to Nova Scotia's legislation prohibiting abortions in free standing clinics on behalf of Canadian Abortion Rights Action League (C.A.R.A.L.) and Dr. H. Morgentaler.
- Argued as co-counsel in *Lavoie v. Cape Breton County District School Board* (N.S.S.C.). Sought an Interlocutory Injunction in July/1987 - (S.H. No. 59252, Prothonetory's Office) and argued the case in full trial during January, March and August 1988.
- *Lavoie v. A.G. of N.S.* (1988), 84 N.S.R. (2d) 387 (T.D.) and (1988), 90 N.S.R. (2d) 16 (T.D.).
- *Lavoie v. A.G. of N.S.,* (1989), 58 D.L.R. (4th) 293 (N.S.S.C. - App. Div.). Successfully argued this appeal in February 1989. This was the first Nova Scotia case on minority language educational rights.
- Wrote the trial, appeal and Supreme Court of Canada facta and acted as constitutional consultant in *Charter* challenge to the *Federal Court Act - Dywidag Systems v. Zutphen Bros. Construction Ltd.*, (1987), 76 N.S.R. (2d) 398 (N.S.S.C. - App. Div.), reversed in (1990), 106 N.R. 11 (S.C.C.).
- Argued as co-counsel in *Elwood v. Halifax County-Bedford District School Board* (N.S.S.C.). Interlocutory Injunction obtained in October, 1986 and out of court settlement June 1, 1987 (*Charter* challenge on behalf of mentally disabled). This case forms one of the three chapters in Jack Batten, *On Trial*, Toronto: MacMillan, 1988.

- *Report of the Canadian Bar Association's Special Committee on Cameras in the Courts: Final Report August 1987*. Served as a contributing member of the committee and prepared and wrote the appendix on "Constitutional Considerations".
- Panel Member for Canadian Human Rights Tribunal on Physical Disability Discrimination- *DeJager v. D.N.D.,* (1986), 7 C.H.R.R. D/3508. Wrote the tribunal decision, July, (1986).
- Argued Leave Motion in Supreme Court of Canada re *Charter* challenge to *R. v. Bezanson,* (1983), 61 N.S.R. (2d) 181 (N.S.S.C. App. Div.). Also prepared *Charter* aspect of factum for N.S.S.C., Appeals Division argument.
- Argued some of the early Charter of Rights cases and succeeded in invalidating section 8 of *Narcotic Control Act*.
- *R. v. Cook,* (1983), 4 C.C.C. (3d) 419 (N.S.S.C. - App. Div.).
- *R. v. Cranston,* (1983), 55 N.S.R. (2d) 376 (N.S.S.C.) - Appeal June 7/83 - Not Reported.

Law Clerk 1978 - 1979
To the late Rt. Hon. Bora Laskin, Chief Justice of the Supreme Court of Canada

Appointments

- Chair, Saint Mary's University President's Council on changing campus culture to prevent sexual violence, and promote safety and respect, September 6, 2013.
- Chair, John Yogis and Donald Keddy Chair in Human Rights Law July 5, 2012.
- Associate Dean Research, Schulich School of Law, July 1, 2011.
- Chair, Nova Scotia Task Force on Bullying and Cyberbullying, May, 2011.
- Member, Atlantic Human Rights Center Board, September, 2009.
- Member of Queen's Counsel, appointed May 11, 2009.
- Member of Nova Scotia Barristers' Society Discipline Committee, June, 2008.
- Member of Blue Ribbon Panel on the Future of Medical Education in Canada appointed by the Association of Faculties of Medicine of Canada, March, 2008.
- Member of Canadian Civil Liberties Association July, 2007. Reappointed July, 2009-2011.
- Acting Citizenship Judge (in Order of Canada capacity) February, 2006. Presided over citizenship ceremonies on Feb. 22/06; Aug. 30/06; Mar. 15/07 and April 15/08.
- Member, Order of Canada (June, 2005).
- Member, Canadian Association of Law Teachers Panel on Supreme Court Appointments, 2004 – 2005.

- Vice Chair, International Center for Human Rights and Democracy, 2002 - 2006. (Acting Chair 2004 – 2005). Currently Strategic Counsel to both the Board and the Center.
- Member, Panel from which Tribunals of Inquiry are selected under the *Nova Scotia Human Rights Act*, 1993 - 1995.
- Member, Nova Scotia Human Rights Commission, 1990 - 1992.
- Director, Law Programme for Indigenous Blacks and Micmacs (I.B.M.), 1989 - 1991.
- Chair, President's Task Force on Access for Black and Native People. Produced Task Force Report - *Breaking Barriers: Access for Black and Native People*, 1989.
- Member, Special Committee on Cameras in the Courts, C.B.A. (National), 1985 - 1987.
- Member of panel from which Tribunals of Inquiry are selected under the *Canadian Human Rights Act*, 1984 - 1986.

Research and Advice to Government

Drawing upon his expertise in Constitutional Law and human rights, Professor MacKay has given advice to governments at the provincial and federal levels.

Adding Social Condition to the Canadian Human Rights Act: Updated and Revised to 2013 (with Natasha Kim and research assistance of Jennifer Huygen and Crystle Hug). A study commissioned by the Canadian Human Rights Commission and submitted September, 2013. This extensive and fully updated research paper will appear on the Commission's web page and be the focus of a consultation and possible statutory amendment process in 2013-14. Professor MacKay will also present to Commissioners in November, 2013, in Ottawa.

"Responding to Cyberbullying: The Path to More Respectful and Responsible Relationships". Presentation (as an expert witness) to the *Senate of Canada Standing Committee on Human Rights* (Cyberbullying and Canada's International Obligations), Senate of Canada, Ottawa, Canada, June 11, 2012.

"Cyberbullying in the School Context: Lessons from the Nova Scotia Task Force Experiences". Presentation (as a witness) by video link as part of the Canadian National School Boards Association Presentation to the *Senate of Canada Standing Committee on Human Rights* (Cyberbullying and Canada's International Obligations) Halifax, Nova Scotia, May 14, 2012.

Appeared before the *Nova Scotia Law Amendments Committee*, as expert witness, re – Proposed Amendments to Bill 30 (*Promotion of Respectful and Responsible Relationships Act*) Nova Scotia Legislature, Halifax, Nova Scotia, May 8, 2012.

Respectful and Responsible Relationships: There's No App for That: Report of the Nova Scotia Task Force on Bullying and Cyberbullying, appointed chair of the Task Force by Nova Scotia Department of Education, May, 2011, submitted Report on February 29, 2012. (authored the

Report).

Served as member of a legal advice team (with John Whyte and Mary Ellen Turpel-Lafond) to the National Panel on First Nations Education in Canada, and contributed to its report entitled *Nurturing the Learning Spirit of First Nations Students: The Report of the National Panel on First Nations Elementary and Secondary Education for students on Reserve*, between October, 2011 and February, 2012.

Keynote Presentation: Responding to the Needs of Disable Children: the Promise and Limits of Equality. Consultation services retained by the Quebec Department of Education, Quebec City, Quebec, October, 2010.

Discussion Guide for Phase Two Consultation on Setting the Direction for Special Education in Alberta (with Professors Sharon Frieson and Shirley McBride). Consultation services retained by Calder Bateman Communications, agents of the Alberta Department of Education, Edmonton, January – February, 2009.

"Putting the French Immersion Debates in the Broader Context of Inclusion and Advancing the Education of 'All' Students". A presentation to the Minister's Consultation on French Secondary Language Programs for New Brunswick Public Schools, Fredericton, New Brunswick, July 10, 2008.

"Adding Social Condition to the Canadian Human Rights Act" (with Natasha Kim). A study commissioned by the Canadian Human Rights Commission and submitted March, 2008. This extensive 210 page research paper will appear on the Commission's web page and be the focus of a consultation and possible statutory amendment process in 2008-2009. Professor MacKay also presented to Commissioners and staff on February 23 and 24, 2009, in Ottawa.

"Promotion and Protection of Democracy, Policies and Perspectives for the 21st Century" Presentation as Vice Chair of Rights and Democracy to Senate Standing Committee on Foreign Affairs and International Development. Ottawa, October 2, 2006.

"Inclusive Education: A Review of Programming and Services in New Brunswick" A province-wide Study and Consultation commissioned by the New Brunswick Minister of Education in November, 2004. Consultations conducted with a wide range of stakeholders during 2004 – 2005 and comprehensive final Report and Recommendations submitted in December, 2005. The final Report is entitled, *Connecting, Care and Challenge: Tapping Our Human Potential* and is available on the New Brunswick Department of Education web page.

"Rights by Example: The Education Context as a Microcosm of Society's Recognition of the Rights of Children". Presentation to the *Standing Senate Committee on Human Rights*, Senate of Canada, Halifax, June 16, 2005.

"Human Rights and Counter-Terrorism A Fine Balance". Presentation to the *Special Senate Committee on the Anti-Terrorism Act*, Senate of Canada. Ottawa, Canada, March 15, 2005.

″Reflections on Two Decades of the Charter: Changing Canadian Society″. Presentation to the *Standing Human Rights Committee of the Senate of Canada* on the 20th Anniversary of the *Canadian Charter of Rights,* Senate of Canada, Ottawa, April 15, 2002.

″An Analysis of the Anti-terrorism Bill: Security at What Price? ″. Presentation to the *Special Senate Committee on the Subject Matter of Bill C-36,* Senate of Canada, Ottawa, Canada, October 24, 2001.

"Social Condition as a Prohibited Ground of Discrimination under the *Canadian Human Rights Act*" (with Natasha Kim and Tina Piper), Study Paper, submitted to Canadian Human Rights Act Review Panel, December, 1999 and adopted by the Panel (Chaired by Justice LaForest) in its 2000 Report - *Promoting Equality: A New Vision*.

Appeared before the *Legal and Constitutional Affairs Committee of the Senate of Canada* as an expert legal witness on Bill C-71 (Tobacco Advertising), Senate of Canada, Ottawa, Canada, April 7, 1997.

Appeared before the *Legal and Constitutional Affairs Committee of the Senate of Canada* as an expert legal witness on Bill C-22 (Pearson Airport Cancellation), Senate of Canada, Ottawa, Canada, October, 1994, January, 1995, May 1995.

Co-chaired (with Leon Trakman) "Charter Advisory Committee" and member of "Advisory Committee on the Constitutional Amending Process" to *Nova Scotia Kieran's Committee on Constitution*, 1991.

Served as a member on the *Canadian Observer Delegation for the Chilean Election* (sponsored by Oxfam Canada), December, 1990.

Presentation to *The Standing Committee on Legal and Constitutional Affairs of the Senate of Canada* Re - Bill C - 84 (Refugee Bill) and potential *Charter* violations. Presentation in conjunction with David Beatty, Mark Gold and Dale Gibson, Senate of Canada, Ottawa, Canada, October 13, 1987.

Submission to the Special Joint Committee on the 1987 Constitutional Accord: Constitutional Vision or Legal Nightmare, August 5, 1987, Ottawa.

"Institutional and Constitutional Arrangements: An Overview" in Clare Beckton and Wayne MacKay, *Recurring Issues in Canadian Federalism*, vol. 57 of the research reports under the Macdonald Commission, at 1-75 (with Clare Beckton), University of Toronto Press, 1986.

"The Supreme Court of Canada: Reform Implications for an Emerging National Institution" in Clare Beckton and Wayne MacKay, *The Courts and the Charter* vol. 58 of the research reports under the Macdonald Commission, at 37 - 131 (with Richard Bauman). University of Toronto Press, 1985.

Research Coordinator (with Clare Beckton) for the Royal Commission on the Economic Union (Macdonald Commission) responsible for *Recurring Issues in Canadian Federalism* (Vol. 57) and *The Courts and the Charter* (Vol. 58) of the research reports series.

Research Report on the Proposed Amendment to section 96 of the *Constitution Act, 1867* (A Report for the Nova Scotia Government submitted September, 1984), (with Wade MacLauchlan.)

"Communications in the Constitutional Framework: New Wine, Old Bottles and Leaking Jugs" as Part IV of *An Analysis of Objectives for Canadian Broadcasting*, (A Report for the Federal Department of Communications submitted Spring, 1981).

Submission on Control of Communications: A Brief to the Nova Scotia House of Assembly Select Committee on Constitutional Matters, January, 1979.

Degrees and Honours

Supreme Court of Nova Scotia
Admitted Barrister of the Supreme Court of Nova Scotia, September 1, 1980, Queen's Counsel, May 11, 2009.

Order of Canada
Appointed Member of the Order of Canada, June, 2005, inducted February 17, 2006.

Paul Harris Fellow
Appointed by the Rotary Foundation of Rotary International "in appreciation of tangible and significant assistance given to the furtherance of better understanding and friendly relations among peoples of the world." February 23, 2005.

Recipient Queen Elizabeth II Medals
For Distinguished Public Service – Bicentennial Medal (1952-2002) and Diamond Jubilee Medal (1952-2012) in 2002 and 2013, respectively.

Bachelor of Laws, 1978
Dalhousie University, Halifax, Nova Scotia

Bachelor of Education, 1972
Mount Allison University, Sackville, New Brunswick

Master of Arts, (History), 1971
University of Florida, Gainesville, Florida.

Bachelor of Arts, (Honours History), 1970
Mount Allison University, Sackville, New Brunswick

Scholarly Research & Publications

Primary areas of research interest include the Charter of Rights, fundamental freedoms, public law, education law, criminal law, privacy law and human rights.

Books

A. Wayne MacKay, Lyle Sutherland and Kimberley D. Pochini, *Teachers and the Law: Diverse Roles and New Challenges*, 3rd ed. (Toronto: Emond-Montgomery Ltd., 2013). Updated, expanded and revised edition with two completely new chapters and a total of 300 pages.

A. Wayne MacKay, *Respectful and Responsible Relationships: There's No App for That: The Report of the Nova Scotia Task Force on Bullying and Cyberbullying*. Submitted to the Nova Scotia Department of Education on February 29th, 2012. Available on request from the Department of Education and electronically published at (cyberbullying.novascotia.ca).

A. Wayne MacKay, *Connecting, Care and Challenge: Tapping Our Human Potential*, Inclusive Education: A Review of Programming and Services in New Brunswick. Submitted to the New Brunswick Department of Education on December 31, 2005 and available on the Department web page and from the Department in hard copy form.

A Wayne MacKay & Lyle Sutherland, *Teachers and the Law, 2nd ed.* (Toronto: Emond-Montgomery Ltd., 2006). Updated and significantly revised edition that is double the length of the 1st edition.

A. Wayne MacKay & Greg Dickinson, *Beyond the "Careful Parent": Tort Liability in Education*, (Toronto: Emond-Montgomery Ltd., 1998).

A. Wayne MacKay & Pam Rubin, *Study Paper on Psychological Testing and Human Rights in Education and Employment*, (Toronto: Ontario Law Reform Commission, 1996).

A. Wayne MacKay & Lyle Sutherland, *Teachers and the Law: A Practical Guide for Educators* (1st ed.), (Toronto: Emond - Montgomery Ltd., 1992).

A. Wayne MacKay & Greg Dickinson, *Rights, Freedoms and the Education System in Canada: Cases and Materials*, (Toronto: Emond - Montgomery Ltd., 1989).

A. Wayne MacKay, Christine Boyle, Edward. McBride & John Yogis, eds., *Charterwatch: Reflections on Equality*, (Toronto: Carswell, 1986), 35-105.

A. Wayne MacKay, *Educational Law in Canada*, (Toronto: Emond - Montgomery Ltd., 1984).

Selected Articles
(This is a small sampling of the 90 articles and comments with a greater emphasis on recent times. The complete list of publications is in the full curriculum vitae.)

A. Wayne MacKay, Chapter 4 – "Evolving Fundamental Principles and Merging Public Law Silos: The Reshaping of Canada's Constitutional Landscape", in E. Mendes and S. Beaulac (eds.) *Canadian Charter of Rights and Freedoms*, 5th ed. (Toronto: Lexis Nexis Can. Inc., 2013) at 83-146. The chapters of this book are also to appear as a special issue of the *Supreme Court Law Review* in 2013-14.

A. Wayne MacKay, "The Marriage of Human Rights Codes and Section 15 of the Charter in Pursuit of Equality: A Case for Greater Separation in Both Theory and Practice" (2013) 64 U.N.B.L.J. 54. Special Issue on the Topic: The Promise of Equality Are We There Yet?

A. Wayne MacKay, "The Comparative Roles of Courts and Administrative Agencies: Applying Constitutional Principles of Diversity in Canada" (2011), 29 National Journal of Constitutional Law 33.

A. Wayne MacKay (with the assistance of Victoria Young) "Justice Bastarache, the Charter and Judging: Principled Pragmatism and the Centrality of Equality" in N.C.G. Lambert (ed.), *At the Forefront of Duality – Essays in Honour of Michel Bastarache* (Cowansville, Que.: Yvon Blais/Thomson Reuters, 2011) at 165.

A. Wayne MacKay, "An International Call for Action and Canada's Long and Winding Road to Inclusion" (2010), Hong Kong Law J. 449.

A. Wayne MacKay, "Social and Economic Rights in Canada: What Are They and Who Can Best Protect Them?" (with the assistance of Natasha Kim), in B. Adell and J. Magnet (eds.), *Canadian Rights and Freedoms: 25 Years under the Charter* (Toronto: Butterworths, 2009). Also a special volume (2009) 45 Sup. Ct. Law Rev. 385.

A. Wayne MacKay, "The Lighthouse of Equality: A Guide to Inclusive Schooling" in M. Manley-Casimir (ed.) *The Courts, the Charter and the Schools* (Toronto: Univ. of Toronto Press, 2009) at .

A. Wayne MacKay, "Safe and Inclusive Schools – Expensive … Quality Education – Priceless. For Everything Else There's Lawyers!" (2008) 18 Education Law J. 21.
A. Wayne Mackay, "Author's Summary Connecting Care and Challenge: Tapping Our Human Potential-Inclusive Education: A Review of Programming and Services in New Brunswick" (2007) 17 Education Law J. 37.

A. Wayne MacKay, "In Defence of the Courts: A Balanced Judicial Role in Canada's Constitutional Democracy" (2007) 20 National Journal of Constitutional Law, 183.

A. Wayne MacKay and Tina Piper, "The Domestic Implementation of International Law: A

Canadian Case Study" in Errol Mendes, ed., *Bridging the Global Divide on Human Rights: A Canada-China Dialogue* (Toronto: Ashgate Publishing, 2003), 111-131.

A. Wayne MacKay & Monica McQueen, "Public Inquiries and the Legality of Blaming: Truth, Justice and the Canadian Way" in Alan Manson and David Mullan, eds., *Commissions of Inquiry: Praise or Reappraise* (Toronto: Irwin Law, 2002), 249-292.

A. Wayne MacKay, "The Legislature, the Executive, and the Courts: The Delicate Balance of Power or Who is Running This Country Anyway?"(2001) 24 Dal. Law J. 37.

A. Wayne MacKay, "The Supreme Court of Canada and Federalism: Does / Should Anyone Care Anymore?" (2001) 80 Can. Bar Rev. 241. (Special edition to commemorate 125th Anniversary of the Supreme Court of Canada).

A. Wayne MacKay, "Judging and Equality: For Whom Does the Charter Toll", in Logan Atkinson, Jane Dickson-Gilmore, Mary-Anne Nixon, Neil Sargent, Peter Swan and Barry Wright, eds., *Introduction to Legal Studies, Third Edition The Carleton Department of Law Casebook Group* (Toronto, Captus Press Inc., 2001), 116-121.

A. Wayne MacKay, Richard Devlin & Natasha Kim, "Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary or Towards a "Triple P" Judiciary" (2000) 38 Alta. Law Rev. 734.

A. Wayne MacKay, "The Waves of Information Technology, the Ebbing of Privacy and the Threat to Human Rights" (1999) 10 National J. of Constitutional Law 411.

A. Wayne MacKay, "Framing the Issues for Cameras in the Courts: Redefining Judicial Dignity and Decorum" (1996) 19 Dal. Law J. 139.

A. Wayne MacKay & Vincent Kazmierski, "And on the Eighth Day, God Gave Us - Equality in Education: *Eaton v. Brant, Board of Education* and Inclusive Education" (1996) 7 National J. of Constitutional Law 1.

A. Wayne MacKay, "Judicial Free Speech and Accountability: Should Judges be Seen but not Heard?" (1993) 3 National J. of Constitutional Law 159.

A. Wayne MacKay & Richard Devlin, "An Essay on Institutional Responsibility: The I.B.M. Programme at Dalhousie Law School" (1991) 14 Dal. Law J. 296.

A. Wayne MacKay, "Dispensing Justice in Canada: Exaggerating the Values of Judicial Independence" (1991) 40 U. N. B. Law J. 273.

A. Wayne MacKay, "Freedom of Expression: Is It All Just Talk?" (1989) 68 Can. Bar Rev. 13. (An updated and reworked version of the article below).

A. Wayne MacKay, "Interpreting the Charter of Rights: Law, Politics and Poetry" in Gerald A. Beaudoin, ed., *Charter Cases 1986-87 (Proceedings of the October 1986 Colloquium of the Canadian Bar Association in Montreal)* (Cowansville: Yvon Blais Inc., 1987), 347-383.

A. Wayne MacKay & Isabel Grant, "Constructive Murder and the Charter: In Search of Principle" (1987) 25 Alta. L. Rev. 129.

A. Wayne MacKay, "Fairness After the Charter: A Rose By Any Other Name" (1985) 10 Queen's L. J. 263. This is a special issue on Administrative Law and the *Charter of Rights*.

A. Wayne MacKay, "The Canadian Charter of Rights: A Springboard for Students' Rights" (1984) 4 The Windsor Yearbook of Access to Justice 174.

A. Wayne MacKay & Margaret Holgate. "Fairness in the Allocation of Housing: Legal and Economic Perspectives" (1983) 7 Dal. Law J. 383. This was the special centennial edition of the Law Journal.

A. Wayne MacKay, "Human Rights in Canadian Society: Mechanisms for Raising the Issues and Providing Redress" (1978) 4 Dal. Law J. 739.

Comments and Annotations

A Wayne MacKay, "Extending Charter benefits to Canada's poor" *The Lawyers' Weekly*, April 17, 2009. (Focus on Constitutional Law Supplement).

A Wayne MacKay, "Power, Parliament and Prorogation: A Canadian Political Drama", *Jurist* (on-line publication from the University of Pittsburgh) December 12, 2008. Reprinted in *dialogue Magazine*, Vol. 22, No. 5, February – March, 2009, at 8.

A. Wayne MacKay, "Why the Government Was Wrong to Cancel the Court Challenges Program" (with Daniel McGruder and Kenneth Jennings), in M. Charlton and P. Barker (eds.) *Crosscurrents: Contemporary Political Issues* (6th ed.) (Toronto: Thomson Nelson, 2009) at 371.

A. Wayne MacKay, "Social and Economic Rights in Canada: What Are They and Who Can Best Protect Them?" in Association for Canadian Studies, *The Charter of Rights and Freedoms in Canadian Society: 1982-2007 / Canadian Issues / Thémes Canadiens, Fall/2007 at 37.*

A. Wayne MacKay, "R. v. Sharpe: Pornography, Privacy, Proportionality and the Protection of Children" (1999) 12 National J. of Constitutional Law 113.

A. Wayne MacKay "Don't Mind Me, I'm From the R.C.M.P.: R. v. M.R.M. Another Brick in the Wall Between Students and Their Rights" (1997) 7 Criminal R. (5th) 24.

A. Wayne MacKay & Vaughn Black, "Constitutional Alchemy in the Supreme Court: *Hunt v. T.&N. plc.*" (1994) 5 National J. of Constitutional Law 72.

A. Wayne MacKay, "Students as Second Class Citizens under the Charter" (1987) 54 Criminal. R. (3d) 390.

A. Wayne MacKay and Thomas Cromwell, "Oakes in the Supreme Court: A Cautious Initiative Unimpeded by Old Ghosts" (1986) 50 Criminal. R. (3d) 34.

A. Wayne MacKay & Thomas Cromwell, "Oakes: A Bold Initiative Impeded by Old Ghosts" (1983) 32 Criminal. R. (3d) 221.

Academic Conference Papers Delivered

In the thirty-five years between 1979 - 2014, while at Dalhousie Law School, the Nova Scotia Human Rights Commission, and Mount Allison as President, delivered approximately one hundred and ninety conference addresses to academic and legal audiences. This is just a small sampling of some of those presentations.

Conferences and Presentations as Law Professor and Human Rights Director

Pivotal Cases of the Supreme Court of Canada: Reflecting on the Past and "Charter"ing the Future, sponsored by the National Constitutional and Human Rights Section of the Canadian Bar Association, Ottawa Mariott Hotel, Ottawa, Ontario, June 27, 2014. Topic – "Making Human Rights Accessible."

Designing and Delivering Judicial Education Programmes to Respond to Contemporary Needs "The Intersection of Law and Morality": Commonwealth Judicial Education Institute Biennial Meeting, sponsored by Commonwealth Judicial Education Institute (CJEI), Cambridge Beaches Resort and Spa Sandy's Bermuda, May 12-14, 2014. Topic – "The Impact of Developing Technologies on the Law and Court Processes – Cyberbullying As A Case Study."

Equality in Law and Education: The Small under the Protection of the Great, sponsored by Canadian Association for the Practical Study of Law and Education (CAPSLE), Delta Prince Edward, Charlottetown, Prince Edward Island, April 27-29, 2014. Topic – "Sexualized Cyberbullying and Violence Generally on Campuses and Beyond: Restoring Respectful Relationships and Promoting Human Dignity in Schools and Universities."

Anti-violence Efforts in Schools: Defining Child Rights-based Approaches: Annual Spring Conference, sponsored by Interdisciplinary Research Laboratory on the Rights of the Child (IRLRC), Faculty of Social Sciences, University of Ottawa, Ottawa, Ontario, March 13, 2014. Topic – "Effectively Responding to Bullying and Cyberbullying: There's No App for That."

The Ivan C. Rand Memorial Lecture Series (Twenty-First), sponsored by the University of New

Brunswick Law School, Faculty of Law, Fredericton, New Brunswick, February 20, 2014. Topic – "Law as an Ally or Enemy in the War on Cyberbullying."

Privacy, Security & Surveillance – Developments and Challenges in the Information Age: Information Without Borders 2014, sponsored by the Dalhousie Faculty of Management, Student Union Building, Dalhousie University, Halifax, Nova Scotia, February 13, 2014. Topic – "Is Privacy Dead in the Age of Social Media and Technology."

Maritime Access, Privacy, Security & Records Management Workshop: Maintaining Connections, sponsored by Canadian Access and Privacy Association (Nova Scotia Chapter), World Trade and Convention Center, Halifax, Nova Scotia, June 18, 2013. Topic – "Cyberbullying, Anonymity, Privacy and the Challenges Posed by Law from The Rehtaeh Parsons Case."

The Ombuds Office in Canada Today: Learning and Working Together, sponsored by the Forum of Canadian Ombudsman and Association of College and University Ombudspersons (joint conference), Westin Nova Scotian, Halifax, Nova Scotia, June 10, 2013. Topic – "The Links Between Substance and Process: Lessons Learned from the Nova Scotia Task Force on Bullying and Cyberbullying."

Renewing The Vision: National Human Rights Conference, sponsored by Canadian Association of Statutory Human Rights Agencies (CASHRA), Harbourfront Marriott Hotel, Halifax, Nova Scotia, May 29-31, 2013. Topics – "The Moore Case: What is the Context of Equality?" and "Substantive Equality and Non Discrimination: Roles of Courts and Human Rights Commissions."

PREVNET's 7th Annual Conference: It's Everybody's Role to Promote Mental Health and Prevent Bullying, sponsored by Promoting Relationships and Eliminating Violence Network (PREVNET), Chestnut Conference Centre, Toronto, Ontario, May 6-7, 2013. Topic – "The Roles of Parents, Individuals and Organizations in Reducing Cyberbullying: A Legal Perspective."

Clicks and Stones: Cyberbullying, Digital Citizenship and the Challenges of Legal Response, sponsored by Faculty of Social Work and Law, University of Toronto and Centre for Innovation Law and Policy, Munk Center, University of Toronto, Toronto, Ontario, May 3, 2013. Topic – "The Scope and Limits of Law in Responding to Cyberbullying: The Nova Scotia Experience."

Patron Commonwealth Chief Justices' Meeting, sponsored by the Commonwealth Judicial Education Institute (CJEI), Westin Grand Hotel, Cape Town, South Africa (by video link from Dalhousie University), April 14, 2013. Topic – "The Impact of Developing Technologies on the Law and Court Processes – Cyberbullying."

National Judicial Institute Criminal Law Seminar: Brave New World of Criminal Law in Cyberspace, sponsored by the National Judicial Institute, Hotel Omni Mont Royal, Montreal, Quebec, March 20, 2013. Topic – Keynote – "Responding to Cyberbullying: The Path to More

Respectful and Responsible Relationships."

Law and Technology Institute: Eminent Speakers Series: The Implications of the Supreme Court of Canada Decision – A.B. v. Bragg, sponsored by Dalhousie Law and Technology Institute, Schulich School of Law, Halifax, Nova Scotia, January 10, 2013. Topic – "Protecting Vulnerable Youth from Sexualized Cyberbullying: A Legitimate Limit on Freedom of Expression and the Open Court."

Health Association Nova Scotia's Labour Relations Conference 2012: Accommodation of Disabilities in the Workplace, sponsored by Nova Scotia Federated Health and Safety Association (NSFHSA), Quality Inn, Halifax, Nova Scotia, October 3, 2012. Topic – "Accommodating Disabilities in the Workplace: The Human Rights Imperative."

Taking Stock of Inclusion in the Education Sector: Where Have We Come From, Where Are We Going?, sponsored by the Atlantic Human Rights Center (AHRC), Crowne Plaza Hotel, Fredericton, New Brunswick, June 15, 2012. Topic – "Inclusion, Bullying and School Violence: Links, Myths and Realities."

Annual Atlantic Native Teachers' Education Conference: Student Success in the 21st Century, sponsored by Atlantic Native Teachers' Education Group (ANTEC), University of Cape Breton, Sydney, Nova Scotia, May 17, 2012. Topic – "Respectful and Responsible Relationships: There's No App for That – Reflections on the Nova Scotia Task Force on Bullying and Cyberbullying."

Annual Canadian Bar Association Meeting (International Commission of Jurists segment), sponsored by International Commission of Jurists, World Trade Center, Halifax, Nova Scotia, August 14, 2011. Topic – "Judicial Impartially and Independence: The Nature of Judging."

The 2011 Annual Meeting of the Nova Scotia Barristers' Society: Back to Law School, Strong Traditions, Fresh Ideas, sponsored by the Nova Scotia Barristers' Society, Schulich School of Law, Halifax, Nova Scotia, June 11, 2011. Topic – "Administrative Tribunals Applying the Charter: Not Just a Holy Grail for Courts".

Supreme Court of British Columbia Education Seminar, sponsored by the National Judicial Institute, in Vancouver, British Columbia, November 8 – 10, 2010. Topic – "Different Routes to Equality: Separate but Equal?".

National Education Conference, sponsored by Canadian Association of Provincial Court Judges, Halifax, Nova Scotia, September 30 – October 1, 2010. Topic – "The Intersection of Education Law and Provincial Court Jurisdiction: Some of What You Wanted to Know About Education, Children, Parents, Judges and Schools but Were Afraid to Ask".

Symposium: Contribution of the Honourable Michel Bastarache, sponsored by the University of Moncton Law School, Hotel Beausejour, Moncton, New Brunswick, May 3 – 5, 2010. Topic – "Justice Bastarache, The Charter and Judging: The Centrality of Equality and Principled

Pragmatism."

Inclusion in Education: The Implementation of Article 24 of the United Nations Convention on the Rights of Persons with Disabilities, sponsored by the University of Hong Kong and the University of Hawaii Institute for Peace, at University of Hong Kong, Hong Kong, China, November 28, 2009. Topic – "An International Call for Action and Canada's Long and Winding Road to Inclusion: The Canadian Experience."

Dalhousie University Black Student Center 20th Birthday Celebration, sponsored by Dalhousie University, Halifax, Nova Scotia, October 15, 2009. Topic – "The History and Context of the Black Student Center: Breaking Barriers Report (1989)."

Third Annual International Seminar on Inclusive Education, sponsored by Rea Tech Educational Consultants, April 2-3, 2009 Sao Paulo, Brazil. Topic – "A Canadian Perspective on Inclusion: What Is Inclusion Anyway?"

2008 Joseph Howe Symposium: The Media's Right to Offend: Exploring The Legal and Ethical Limits of Free Speech, sponsored by the School of Journalism, King's College, November 1, 2008, King's College, Halifax, Nova Scotia. Topic – "The Constitutional and Legal Parameters of the Offensive Free Speech Debate."

Educational Leadership Today and Tomorrow: The Law as Friend or Foe, sponsored by the Canadian Association for the Practical Study of Law and Education (CAPSLE), April 20-22, 2008, Halifax, Nova Scotia. Topic – "Safe and Inclusive Schooling = Expensive / Quality Education = Priceless / For Everything Else There's Lawyers", (Keynote Address).

Sixth Annual Lieutenant-Governor Lois E. Hole Lecture in Public School Education, sponsored by the Public School Boards' Association of Alberta, November 17, 2007, Westin Hotel, Edmonton, Alberta. Topic – "The Lighthouse of Equality and Inclusive Schooling."

National Administrative Law and Labour and Employment Law CLE Conference: Getting Down to Brass Tacks: More Than Just Standards of Review, sponsored by the Canadian Bar Association (Administrative and Labour Section), November 16, 2007, Hilton Hotel, Gatineau, Quebec. Topic – "The Comparative Role of Courts and Administrative Agencies: Applying Constitutional Principles of Diversity in Canada."

The Viscount Bennett Memorial Lecture Series: Judging Rights, sponsored by the Faculty of Law, University of New Brunswick, November 1-2, 2007. University of New Brunswick Faculty of Law, Fredericton, New Brunswick. Topic __ "Inclusive Schools: Principles, Promises and Challenges: The Mackay Report and Beyond."

Canadian Rights and Freedoms in Our Future: The Next 25 Years Under the Charter, sponsored by the Association of Canadian Studies and Ottawa University, April 16 – 17, 2007, Ottawa University, Ottawa, Ontario. Topic – "Social Rights and the Canadian Charter of Rights and Freedoms."

Inaugural Shar Shalom Multiculturalism Lecture Series, sponsored by Shar Shalom Synagogue of Halifax and St. Mary's University, March 1, 2007, Saint Mary's University, Halifax, Nova Scotia. Topic – "Multiculturalism, Diversity and Civility in a Post 911 Canada."

Fifth Annual Charter Conference, sponsored by the Ontario Bar Association, September 29, 2006, Toronto, Ontario. Topic – "In Defence of the Courts: A Balanced Judicial Role in Canada's Constitutional Democracy."

Thirteenth Annual American Education Law Conference, sponsored by the University of Southern Maine, The University of Maine School of Law and the University of the Pacific McGeorge School of Law, July 24 – 27, 2006, Portland Maine. Topic – "The Lighthouse of Equality: Clues to the Meaning and Substance of Inclusive Schooling."

Nunavut Legal Aid Anniversary Celebrations, sponsored by Nunavut Legal Aid, November 28, 2004, Iqualuit, Nunavut. Topic – "Nunavut: Canada's New Frontier and Model of Legal Innovation for the World".

The Independence of Bench and Bar: Ancient Principles, Modern Challenges, A symposium in honour of the Honourable T. Alexander Hickman, Chief Justice Supreme Court of Newfoundland, Trial Division, sponsored by the Bench and Bar of Newfoundland and Labrador, November 17, 2000, St. John's, Newfoundland. Topic - "The Legislature, the Executive and the Courts: The Delicate Balance of Power or Who is Running This Country Anyway?".

Symposium on the 125th Anniversary of the Supreme Court of Canada: Legacy and Challenges, sponsored by the Supreme Court of Canada, September 27 - 29, 2000, Ottawa, Ontario. Topic - "The Supreme Court of Canada and Federalism: Does / Should Anyone Care Anymore?".

Building a Human Rights Agenda for the 21st. Century, sponsored by the Ottawa Human Rights Research and Education Centre, October 1-3, 1998, Ottawa, Ontario. Topic - "The Waves of Information Technology, The Ebbing of Privacy and the Threat to Human Rights".

Labour Law Across Canada Conference, sponsored by the Canadian Bar Association, October 23, 1996, Halifax, Nova Scotia. Topic - "The Union's Duty to Accommodate - Solidarity with Whom?"

Annual Meeting of the Canadian Bar Association, sponsored by the Canadian Bar Association, August 23-24, 1994, Toronto, Ontario. Topic - "Framing the Issues for Cameras in the Courts: Redefining Judicial Dignity and Decorum". Later published in Dalhousie Law Journal (1996).

Annual Meeting of the Canadian Bar Association Halifax, Nova Scotia, August 25, 1992. Topic - Judicial Free Speech and Accountability: Should Judges be Seen but Not Heard?"

Autopsy of Charter Cases, sponsored by the Canadian Bar Association, Montreal, Quebec. November 22-24, 1990 - Topic - "Morgentaler: A Case Study in Charter Litigation".

Courts. Media and the Law, sponsored by the Canadian Institute for the Administration of Justice, Winnipeg, Manitoba, August 23-25, 1990. Topic - "Freedom of the Press and Privacy: Irreconcilable Differences?".

Human Rights in Atlantic Canada, a regional conference sponsored by the Atlantic Human Rights Center, Fredericton, New Brunswick, May 24-25, 1990. Topic -"The Limits of Legislating Human Rights".

The Impact of the Marshall Inquiry, sponsored by the Institute of Public Administration, Halifax, Nova Scotia, May 17, 1990. Topic -"The Social Impact of the Marshall Inquiry: An Educator's Perspective".

The Cambridge Lectures - 1989, sponsored by the Canadian Institute for Advanced Legal Studies July 9-19, 1989, Cambridge, England. Topic - "The Charter of Rights and the Corporation: Beyond the Pale of the Corporate Veil". (Chaired, introduced and structured the session.) Summarized in D. Brillinger, "Corporations badly treated in denial of Charter protection?" The Lawyers Weekly, July 28, 1989. (Proceedings published).

Commissions of Inquiry: Lawyers' Values and Policy Makers' Values, February 25-27, 1988, Halifax, Nova Scotia. Topic (Keynote Address) - "Commissions of Inquiry: Do They Have An Identity Crisis?". (Proceedings published 1990).

Symposium on the Meech Lake Accord / University of Toronto, October 29-30, 1987, Toronto, Ontario. Topic - "Linguistic Duality in Canada and the Distinct Society in Quebec: Declarations of Sociological Fact or Legal Limitations on Constitutional Interpretation"? (Proceedings to be published as a book edited by K. Swinton and C. Rogerson, 1988).

The Charter of Rights and Freedoms: Liberty and Equality, sponsored by the Canadian Bar Association, October 23-24, 1987, Montreal, Quebec. Topic - "Freedom of Thought, Belief, Opinion and Expression Including Freedom of the Press and Other Media of Communications and Freedom of Peaceful Assembly: Whose Interests are Protected?". (Proceedings published).

Conferences and Presentations while President of Mount Allison University

"Equality for Students with Disabilities: From Primary to Post-Secondary Education". Presentation to Rights, Obligations and Opportunities: Disability Service Providers Roundtable, Acadia University, Wolfville, Nova Scotia, June 19-20, 2003.

"International Students: Cross Cultural Communication in the Global Village". Keynote address delivered at "Creating Cultural Competence on Campus": Winter Workshop of Atlantic Association of University Student Service Providers, Mount Allison University, Sackville, New Brunswick, February 7, 2003.

"The Anti-Terrorism Bill (Bill C-36): Balancing Security and Freedoms in Canada". a Public

Presentation, Mount Allison University, Sackville, New Brunswick, November 26, 2001.

"The Quebec Secession Reference: From Fiction to Fact and Back". Canadian Studies Discussion with Dr. Ronalda Murphy (Dalhousie Law School). Owens Art Gallery, Mount Allison University, Sackville, New Brunswick, November 19, 2001.

Publications for a General Audience

A. Wayne MacKay "Legal Aspects of Bullying and Cyberbullying: Access to Justice and Legal Responses to an Old Problem with New Dimensions" *The Society Record* (N.S. Barristers' Society) Vol. 29 (No. 2) at 37-38, October, 2011. (Also online – www.nsbs.org/societyrecord.php).

A. Wayne MacKay, "How Harper Will Reshape Canada's Courts" *The Mark* (on-line publication), May 26, 2011. (http://pioneers.themarknews.com/articles/5329-how-harper-will-reshape-canadas-courts/#.Ui4QHT_8J8E)

A Wayne MacKay, Inclusion: What is Inclusion Anyway? (Fredericton: New Brunswick Department of Education, 2007 (Publication for general public in New Brunswick also available on Dept. of Education Webpage).

A. Wayne MacKay and Stephen Kimber, "Law, Morality and Justice in Atlantic Canada" Atlantic Insight (December, 1989).

A. Wayne MacKay "The Rape of Alice in Charterland" (1987) 1 Correctional Rev. 47. Also in Lawyers' Weekly, August 28, 1987 4.

A. Wayne MacKay, "Inmates Rights: Lost in the Maze of Prison Bureaucracy?" (1986) 1 Correctional Rev., 8.

A. Wayne MacKay, Drugs and the Law: A Guide for Students and Teachers (legal and general editor), Halifax, P.L.E. of Nova Scotia, 1983.

A. Wayne MacKay, "Fishermen's Unions: Challenging the Codfish Aristocracy" (1981) 1 Law Union of Nova Scotia Newsletter 1.

A. Wayne MacKay, "Communications and Cultural Identity" (1979) 5 Crossworld 6.