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Global Perspectives on Freedom of Association: Canada

Dwight Newman

Societās Exploring the Value of Freedom of Association

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The Legal Landscape of Freedom of Association in Canada: The Complex Path to Half of a Constitutional Freedom

Dwight Newman, KC[*]

I. Introduction

This paper examines freedom of association in Canada. In particular, it traces why Canada's constitutional protection of freedom of association has developed only slowly and principally in the union context so far, reaching in a struggling way toward what I call "half a constitutional freedom". Freedom of association appears in section 2(d) of the Canadian Charter of Rights and Freedoms, with that section protecting simply 'freedom of association'.[1] That Charter was adopted as part of major constitutional amendments in 1982. Canada did not previously have a written bill of rights within its Constitution, but the *Charter* became a constitutional bill of rights, with constitutional supremacy pursuant to section 52(1) of the Constitution Act, 1982, which states that '[t]he Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect'.[2] Judicial interpretation of the clauses in the Charter thus matters immensely, and this paper principally traces the judicial interpretation of the freedom of association clause, considering why it has developed in the usual way that it has, which is as what I call a "forgotten freedom". This is a concept pertinent to a number of freedoms of Canada's Charter that have not received extensive scholarly or jurisprudential development.[3]

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[1] Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act, 1982 (Canada).

[2] Constitution Act, 1982, s 52(1) (Canada).

[3] Cf D Newman, 'Interpreting Freedom of Thought in the Canadian Charter of Rights and Freedoms' (2019) 91 Supreme Court Law Review 107-122; D Newman, 'Freedom of Thought in Canada: The History of a Forgetting and the Potential of a Remembering' (2021) 8(2-3) European Journal of Comparative Law and Governance 226-244. See also generally D Newman, D Ross and B Bird (eds), *The Forgotten Fundamental Freedoms of the Charter* (Toronto: LexisNexis, 2020).

To someone observing major developments in this area of Canadian law, freedom of association might not initially appear to be a "forgotten freedom". After a period in which it was severely limited in a series of cases known as the *First Labour Trilogy,*[4] it has now spawned in a series of cases being called the *Second Labour Trilogy*, a very significant case law on rights to collective bargaining and, in its culmination, even a right to strike.[5] Nonetheless, what has been protected through this case law is still only what I would call "half a freedom". The development of freedom of association has been essentially solely in contexts of issues on union rights and has not involved the development of freedom of association outside that union context, even if some judicial dicta have hinted at that possibility, as I will unpack through the course of this paper.

That said, the section 2(d) protection of freedom of association in 1982 should not be understood as the first protection of freedom of association in Canada. Association always had protection within the traditions of the English common law and without any statutory or constitutional developments would have continued to do so, analogously to the situation in Australia.[6] However, in the context of international human rights developments of the post-World War II era such as the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR),[7] Canada did adopt some modifications to that common law context, starting in a variety of statutory forms. The 1947 Saskatchewan *Bill of Rights*, slightly preceding the *UDHR* and becoming the first written bill of rights in the Commonwealth since 1689, referred to 'freedom of religious association' and to the right of 'every person and every class of persons […] to form with others associations of any character under the law'.[8] Contemporaneously, in 1946, Justice Ivan Rand rendered a decision in a labour dispute involving Ford employees that would lead to an evolution in Canadian labour legislation to include a widespread compulsory payment of union dues by workers in a bargaining unit whether or not members of the union.[9] When a quasi-constitutional bill of

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[4] *Reference Re Public Service Employee Relations Act (Alta),* [1987] 1 SCR 313; *PSAC* v *Canada* [1987] 1 SCR 424; *RWDSU* v *Saskatchewan,* [1987] 1 SCR 460.

[5] *Mounted Police Association of Ontario v Canada (Attorney General),* 2015 SCC 1, [2015] 1 SCR 3; *Meredith v Canada (Attorney General),* 2015 SCC 2, [2015] 1 SCR 125; *Saskatchewan Federation of Labour v Saskatchewan,* 2015 SCC 4, [2015] 1 SCR 245.

[6] Cf N Aroney and M Fowler, 'Freedom of Association in Australia' (2024) Societās Working Paper 05/2024.

[7] *Universal Declaration of Human Rights*, GA Resolution 217A (III), UN GAOR, UN Doc. A/810 (10 December 1948); *International Convention on Civil and Political Rights*, 999 U.N.T.S. 171 (entered into force 23 March 1976).

[8] The Saskatchewan Bill of Rights Act, SS 1947, ss 3 and 5.

[9] See the history in *R v Advance Cutting & Coring Ltd,* 2001 SCC 70, [2001] 3 SCR 209, paras 4ff.

rights, the *Canadian Bill of Rights*, was adopted at the national level in 1960, it included a recognition of 'freedom of assembly and association'.[10] Because statutory bills of rights had limitations on their impact, the union-context developments arguably had the most practical significance, setting a pattern for the post-1982 changes in which Canada adopted a constitutional bill of rights, drawing significantly from the UDHR and ICCPR, to be called the Canadian Charter of Rights and Freedoms. Regarding the association clause in it, there was debate on whether to include a separate protection for union rights, and some preferred not to have such a protection and some saw it as included in the general freedom of association clause, and the presence of simply a general freedom of association clause occupied a bridge position that left interpretation for the courts.

With that history by way of a backdrop, though, it was potentially significant when Canada's major constitutional amendments in 1982 included freedom of association in the Canadian Charter of Rights and Freedoms, thus making it something constitutionally guaranteed and thus setting a course of interpretation of the scope of that constitutional freedom. In Part II, I trace Canada's complex path on the judicial interpretation of this constitutional freedom and particularly how it ended up seeing development essentially solely in the union context. In Part III, I consider how legislators may speak back to courts on this freedom, briefly discussing why Canada's "notwithstanding clause" has been used and might see more use in contexts of freedom of association involving labour unions. In Part IV, I consider to what degree the jurisprudence on this half of freedom of association has laid groundwork for full constitutional protection of freedom of association beyond the labour context. In Part V, I conclude by drawing together these developments and offering some perspective on how the fuller development of freedom of association may actually require some ongoing shift in the conception of rights in Canada more generally.

II. Canada's Complex Path on Interpretation of the Constitutionally Protected Freedom of Association

The course of development of Canada's constitutionalised protection for freedom of association saw relatively rapid litigation of section 2(d) in a union rights context, culminating in the Supreme Court of Canada's 1987 First Labour Trilogy. The three cases that saw decisions from

[10] Canadian Bill of Rights, SC 1960, c 44, s 1(e).

the Supreme Court of Canada in April 1987 were heard in June through October 1985 and reached those hearings after earlier decisions in light of disputes in 1982 and 1983.[11] The First Labour Trilogy thus involved cases that headed up through the court system essentially immediately after the adoption of the Charter.

That this occurred in this way was on account of several factors, including a complex economic period involving efforts by government employers at wage restraint, ongoing perceptions by governments that they could choose how to resolve public union labour disputes on a unilateral basis when they chose to do so (and thus the presence of real issues about whether section 2(d) would offer protection), and the availability of funds to facilitate litigation of the issues. This last element arises, of course, simply from the fact that significant money is at issue in labour contexts in a way that it is not in other association contexts, thus making labour issues almost inherently most likely to be easily litigated under section 2(d) using a portion of those funds at issue. The result, though, is that the first precedents on association were set in the immediate context of those issues, with the courts directly considering disputes before them with obvious financial implications and thus perhaps inclining them to more judicial restraint, and with doctrines thus developed in ways that responded to that context.

Indeed, the first section 2(d) issue before the Supreme Court of Canada (in the June 1985 argument in *Reference re Public Service Employee Relations Act (Alberta)*[12]) concerned whether there was a right to strike, thus putting perhaps the most challenging section 2(d) claim immediately before the Court. The case thus immediately saw almost all of the Attorneys General lining up with arguments to restrain section 2(d), putting before the Court an impression of unanimous opposition to the argument by the very governments that had just adopted the Charter.

In such a context, the majority judgments in 1987 effectively rejected any idea that there would be significant protection for unions out of the freedom of association. Some of the judges were simply not philosophically prepared for a meaningful content for section 2(d), at least when considered in the cases at issue. In the *Alberta Reference*, both the dissenting judgment of Dickson CJC. (with Wilson J in support) and the majority-side opinion of McIntyre J would

[11] *Reference Re Public Service Employee Relations Act (Alta)* (n 4); *PSAC v Canada* (n 4); *RWDSU v Saskatchewan* (n 4).
[12] ibid.

start off by quoting Tocqueville on the significance of association.[13] However, they would soon diverge in how their judgments proceeded from this initial philosophical starting point.

The dissenting Dickson CJC judgment engaged in extensive discussion of the role of association, referring to its general role within the social life of human beings, to its democratic-type roles, and to its protective roles for individuals arrayed against institutionalised forces - here setting out a broader philosophical groundwork for potential future development of freedom of association in various domains. Within the case, it would have led him, in dissent, to say that limits on the right to strike amounted to an infringement of the Charter's freedom of association clause. However, this was not accepted by the majority. On the majority side, after the Tocqueville reference, McIntyre J would go on to his own distinctive reasoning as he wrestled with what he saw as potential claims of group rights, ultimately trying to reason those through with a rather infamous analogy that seemed to compare labour unions to country clubs as he concluded that freedom of association could not protect anything beyond what individuals could do individually other than the mere fact of doing so together.[14] On this reasoning, since individuals did not have a constitutional right to withdraw their labour on their own, they did not have such a right when doing so together. Justice McIntyre was technically writing alone, but the judgment of Le Dain J (also writing for Beetz J and La Forest J) contained relatively limited reasoning in a three-paragraph judgment about the deference of the courts to the legislators in the context of specialised determinations about the labour system. So, whichever technically counts as the majority opinion, McIntyre J's judgment came to be understood as the main philosophical alternative to Dickson CJC's account and, implicitly on behalf of the Court, one that made freedom of association simply a right to do things together that one could already do individually.[15]

The First Labour Trilogy was obviously subject to extensive scholarly critique,[16] but this was essentially on a reactive basis. What the Court did not have before the judgments rendered so soon after the adoption of the Charter was any sort of scholarly development of a full theory of

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[13] *Alberta Labour Reference* (n 4), [86] and [152]-[154].
[14] ibid [155].
[15] See discussion in e.g. J Fudge, 'Labour is Not a Commodity' (2004) 67 Saskatchewan Law Review 425-452, pp 430ff.
[16] See e.g. J Fudge, 'Labour, The New Constitution and Old Style Liberalism' (1988) 12 Queen's Law Journal 61-111; P Weiler, 'The Charter at Work: Reflections on the Constitutionalizing of Labour and Employment Law' (1990) 40 University of Toronto Law Journal 117-212; K Norman, 'ILO Freedom of Association Principles as Basic Canadian Human Rights: Promises to Keep' (2004) 67 Saskatchewan Law Review 591-608.

freedom of association. Some scholars would offer arguments later concerning association beyond the labour context.[17] Nor did the Court have case law based on any other sort of association whose principles might have guided association in the labour context. Instead, these decisions about association rendered in the context of financially-laden disputes on which a number of the justices were inclined to defer to legislators would become the leading cases on association. They would then shape a restrained approach to section 2(d) in other contexts as well.

By contrast to the *First Labour Trilogy*, by 2015, the Supreme Court of Canada would end up saying that section 2(d) did protect a right to strike.[18] This culmination of what has been called the New Labour Trilogy or Second Labour Trilogy came in the wake of various cases leading up to it, albeit again with the means for litigation being in the labour context more so than in other potential association contexts.

Some of this development was gradual and, indeed, even contained ironies. For example, amid conclusions in favour of a right against compelled association, the 1991 *Lavigne* case also both upheld the Rand formula permitting a requirement to pay dues whether or not an individual was a member of a union as a justified limit on freedom of association and also referenced broader purposes of the freedom in protecting collective action of individuals pursuing common goals.[19] A case that held, in some senses for an individual claim, also permitted the limitation of that claim for collective purposes and began to uphold broader concepts of collective dimensions of the freedom of association.

In its later years, the new case law would, to some degree, build up gradually, partly with a personnel at the Court with different biographical backgrounds oriented to labour law and to ideas of collective rights. For example, Justice LeBel, coming from a practice and scholarly background in administrative law and labour law, as well as an interest in collective rights from his Quebec context,[20] and Justice Abella, coming from work on labour and human rights issues

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[17] See e.g. D Schneiderman, 'Associational Rights, Religion, and the *Charter*' in R Moon (ed), *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008) 65; D Schneiderman and B Cossman, 'Political Association and the Anti-Terrorism Bill' in R Daniels, P Macklem and K Roach (eds), *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2002) 173-194.
[18] *Saskatchewan Federation of Labour* (n 5).
[19] La*vigne v Ontario Public Service Employees Union,* [1991] 2 SCR 211, 253.
[20] See D Newman, 'Aboriginal Rights, Collective Rights, and Adjudicative Virtues' in D Newman and M Thorburn (eds), *The Dignity of Law: The Legacy of Justice Louis LeBel* (Toronto: LexisNexis, 2015).

amid her corporate/commercial practice, would author a number of the judgments in the sequence. While framed in terms of the individual reading of association emanating from earlier case law, LeBel J's 2001 judgment in *Advance Cutting and Coring Ltd* would emphasize the significance of unions and allude to the idea of collective rights in the sense of Charter rights held by entities other than individuals .[21] He coauthored with McLachlin CJC the opinion in *BC Health Services* in 2007,[22] which began to recognise a procedural right of collective bargaining, expanding this in a similarly coauthored opinion in *Fraser* in 2011 to recognise a right to associate to achieve collective goals that would thus protect various bargaining activities.[23] This set the stage for their coauthored opinion in the first of the New Labour Trilogy/Second Labour Trilogy*, Mounted Police* case law in January 2015, which would entrench under section 2(d) 'a meaningful process of collective bargaining that provides employees with a degree of choice and independence sufficient to enable them to determine and pursue their collective interests'.[24] The simultaneously released, and similarly coauthored decision in *Meredith* would seek to show that an alternative consultative process might sometimes meet this section 2(d) standard,[25] demonstrating LeBel J's practicality and recognition for an ongoing role of legislative choices. And the third case, appearing weeks later and thus able to cite to *Mounted Police* as an established precedent, would see Abella J take up the pen to entrench the right to strike, drawing on significant comparative and international law material in the course of doing so.[26] That latter judgment, which colourfully spoke of how it followed the 'arc of justice' and would now grant 'constitutional benediction' to the right to strike,[27] is subject to possible critique on technical grounds in its use of comparative and international material,[28] but it does mark the impact of general jurisprudential trends and in some respects a continuation from the series of cases leading up to it.

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[21] *R v Advance Cutting & Coring Ltd* (n 8). See also *Dunmore v Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 SCR 1016, with Bastarache J, not coming from the same labour background but from an interest in collective rights from his language rights background, holding in favour of farm workers challenging their exclusion from labour law regimes. On collective rights generally, see Dwight Newman, *Community and Collective Rights: A Theoretical Framework for Rights Held by Groups* (Oxford: Hart Publishing, 2013).
[22] *Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391.
[23] *Ontario (Attorney General) v Fraser*, 2011 SCC 20, [2011] 2 SCR 3.
[24] *Mounted Police* (n 5) para [5].
[25] *Meredith* (n 5).
[26] *Saskatchewan Federation of Labour* (n 5).
[27] ibid [1] and [3].
[28] See D Newman, 'A Court Gone Astray on the Right to Strike' *National Post* (26 February 2015).

Some judges dissented in these judgments, notably Rothstein J, who wrote repeatedly against the developments in the majority judgments. Amongst other matters, he asked for legal reasoning that would show a robust engagement with the question of when it was appropriate or inappropriate to overturn precedent,[29] and he expressed concerns about constitutionalising particularised systems of workplace relations.[30] Even while many scholars lauded developments, some scholarly perspectives, even if in complex ways, have shared some of these concerns.[31]

Notably, through a number of these decisions, LeBel J's 2001 judgment in *Advance Cutting and Coring* returns and is cited as defining an interpretive approach to section 2(d) in several of the later cases, highlighting some of the significance of the turn present in his appointment to the Court. Both in his opinion and in later cases, there was also a revival of some of the philosophical reasoning of Dickson CJC's dissenting opinion in the First Labour Trilogy, illustrating some of the significance of dissenting judgments in speaking to the future. In essence, within the various methods of legal reasoning, the Supreme Court of Canada came to revisit its earlier, constrained view on freedom of association and to develop it into a broad right in the union context that offers constitutional protection to many previously statutory labour law developments.

In doing so, the Court has also articulated various philosophical purposes for a meaningful constitutional protection of freedom of association. At one level, freedom of association recognises the social nature of human life and protects the individual from any state-imposed isolation.[32] It also offers a protection of collective action in pursuit of collective goals.[33] It protects vulnerable individuals and groups against institutionalised power and furthers their pursuit of justice.[34] It supports human fulfillment in social life and collective action.[35] And, notably, the Court has written that 'the associational rights protected by section 2(*d*) are not merely a bundle of individual rights, but collective rights that inhere in associations'.[36] These

[29] See his extended discussion in *Ontario (Attorney General) v Fraser*, 2011 SCC 20, [2011] 2 SCR 3, paras 119ff.
[30] *Mounted Police* (n 5) [161]-[162]; *Saskatchewan Federation of Labour* (n 5) [105].
[31] See discussion in BA Langille, 'The Freedom of Association Mess: How We Got Into It and How We Can Get Out of It' (2009) 54 McGill Law Journal 177-212.
[32] *Mounted Police* (n 5) 54.
[33] *Lavigne* (n 18) 253.
[34] *Mounted Police* (n 5) [58].
[35] *Dunmore* (n 22) [17].
[36] *Mounted Police* (n 5) [62].

philosophical conceptions extend significantly the judicial interpretation of a previously constrained freedom, and they have the potential to speak to other types of association as well.

III. Parliaments Speaking Back to Judicial Interpretations

Judicial pronouncements on the interpretation of freedom of association, though, are not the sole pertinent word. Canada's 1982 constitutional amendments added a written bill of rights into a parliamentary system. In the course of these amendments, there were some attempts to bridge the ideas of strong-form judicial rights review and the systems of parliamentary democracy, notably with the inclusion in the Charter of the section 33 'notwithstanding clause'.[37] This clause permits the federal parliament or the provincial legislatures to explicitly indicate that certain laws will operate notwithstanding their impact on specific Charter rights, with the main legal constraints on the use of this notwithstanding clause being a five-year time limit on a use of the clause (subject to renewal) and thus resulting democratic checks on it.[38] The presence of the clause thus supports ongoing parliamentary interpretation of rights in addition to judicial interpretation of rights, and it permits the federal parliament or provincial legislatures to prioritise their interpretation in the context of particular pieces of legislation.

Governments facing the implications of section 2(d) have considered invoking the notwithstanding clause in response to judicial interpretations of section 2(d) from the early years of the Charter on through to the present. Indeed, shortly after the adoption of the Charter, the province of Saskatchewan used the notwithstanding clause in back-to-work legislation ahead of the First Labour Trilogy, out of caution in case a restriction on a strike would be found by the courts to be a section 2(d) violation.[39] In recent years, with the knowledge after the Second Labour Trilogy that restrictions on a strike would raise section 2(d) issues, the province of Ontario passed legislation that would use the notwithstanding clause while preventing teachers from striking.[40] This latter usage exemplifies the democratic checks on the use of the clause, however, in so far as subsequent protests led Ontario to reverse this decision and repeal the legislation in the context of ongoing negotiations.

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[37] See D Newman, 'Canada's Notwithstanding Clause, Dialogue, and Constitutional Identities' in G Sigalet, G Webber and R Dixon (eds), *Constitutional Dialogue: Rights, Democracy, Institutions* (Cambridge: Cambridge University Press, 2019) 209-234.
[38] Constitution Act, 1982 (Canada), s 33.
[39] The SGEU Dispute Settlement Act, SS 1984-85-86, c 11.
[40] Keeping Students in Class Act, 2022, SO 2022, c 19 (subsequently repealed).

Nonetheless, the presence of the notwithstanding clause in the Charter needs to be considered alongside section 2(d) itself in understanding the constitutional protection of freedom of association in Canada. Political doubts about aspects of the judicial interpretation of the clause in the Second Labour Trilogy, especially in the new interpretation that effectively entrenches the right to strike, have led to suggestions that legislative use of the notwithstanding clause may be particularly pursued in this context.[41] There is also a practical argument for legislative use of the notwithstanding clause in back-to-work legislation in so far as in the rare circumstances in which government legislation is used to end a strike, the only way to avoid ongoing litigation about that legislation under section 2(d) may now be to enact it with the notwithstanding clause in it[42]—expanded judicial interpretation may occasion an unexpected legislative response, even if a logically foreseeable one. Thus, the constitutional entrenchment of freedom of association in the labour context in Canada has a judicial aspect and a complex possible set of legislative responses, marking the complex context of Canada's bridging of judicial rights review and the traditional parliamentary system, even as there is ongoing discussion of various debates on the notwithstanding clause.[43]

IV. Constitutional Protections of Association Outside the Labour Context

Because the early case law on section 2(d) was so constrained, the legal landscape of freedom of association in the Canadian *Charter* context would become narrowed in various ways. With financially-backed litigation on section 2(d) in the union context having a head start, section 2(d) precedents did not leave a lot of room for constitutional protection of other associations either. Path dependence may have set the stage, then, for rejections of other association claims, such as familial association. On familial association, the leading case cited in McIntyre J's reasoning in the First Labour Trilogy in the context of saying that those seeking familial association did not seek something that could be protected by freedom of association.[44] Canada's Charter has no separate clause on families, so association had seemed the most plausible protection, but it was not to be. Many rights-seeking groups have been discouraged from even making association arguments. The narrow range of association cases even pursued

[41] See e.g. T Hopper, 'The 'Invented' Right to Strike Revoked by Doug Ford's Use of the Notwithstanding Clause' *National Post* (2 November 2022).
[42] That observation has been made by scholars including Dwight Newman (Newman (n 28)) and more recently by Patrick Taillon in some media interviews.
[43] See e.g. PL Biro (ed), *The Notwithstanding Clause and the Canadian Charter: Rights, Reforms and Controversies* (Montreal/Kingston: McGill-Queen's University Press 2024).
[44] *Catholic Children's Aid Society of Metropolitan Toronto v S* (1989), 69 OR (2d) 189 (Ont. C.A.).

seem to be principally in labour contexts, with a few in economic association and familial association and a tiny scattering of others, but with these having been overwhelmingly unsuccessful, in light of the constrained labour-focused jurisprudence.[45] And those with any other argument have tended to prioritise that. Those who could have argued political association in cases implicating it would instead argue within the constitutional right to vote or freedom of expression.[46] Those who could have argued religious association made some limited attempts at it but mainly ended up in arguments about freedom of religion.[47] On the latter front, the majority even enunciated in the 2018 *Trinity Western* decision a somewhat surprising comment that could discourage association arguments, indicating an unwillingness to consider associational claims underpinned by a 'factual matrix' that was 'indistinguishable' from religious freedom claims.[48] Litigators have thus had various reasons to continue to attempt to argue association claims under the auspices of other rights and freedoms, including in having to operate in the context of a scope for association limited by the early case law.

The shifts in case law in the union context, then, may now open new room for development of the constitutional freedom of association outside the union context. One can find in *Advance Cutting and Coring* statements about the need for a generous interpretive approach to section 2(d) that are not specifically restricted to the union context and, indeed, that would arguably imply generosity in the scope of what freedom of association might protect.[49] More explicitly, the 2015 *Mounted Police* decision, while dealing with a labour rights context, contains *dicta* speaking of association more broadly:

> 'The purposive approach, adopted by Dickson CJ in the *Alberta Reference*, defines the content of s. 2(*d*) by reference to the purpose of the guarantee of freedom of association: ". . . to recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends" (*Alberta Reference*, at p. 365). [….] The historical emergence of association as a fundamental freedom - one which permits the growth of a sphere of civil society largely free from state interference - has its

[45] See André Schutten, 'Recovering Community: Addressing Judicial Blindspots on Freedom of Association' (2020) 98 Supreme Court Law Review 399-430, at 404-405.
[46] Cf. e.g. *Figueroa v Canada (Attorney General),* 2003 SCC 37, [2003] 1 SCR 912.
[47] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32, [2018] 2 SCR 293.
[48] ibid [77].
[49] *R v Advance Cutting and Coring Ltd* (n 9).

> roots in the protection of religious minority groups: M Walzer, "The Concept of Civil Society", in M Walzer, ed, *Toward a Global Civil Society* (1995), 7, at p 20. More recent history also illustrates how the freedom to associate has contributed to the women's suffrage and gay rights movements: JD Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* (2012), at p 45; and D Carpenter, "Expressive Association and Anti-Discrimination Law After *Dale*: A Tripartite Approach" (2001), 85 *Minn. L. Rev.* 1515.'[50]

The explicit references to association outside the union context provide an undergirding for the development of section 2(d) more broadly. In referencing association in contexts of religious association and political movements, the passage connects to the sort of broader content reflected in discussions on the scope of association in contexts like the *travaux* of the *UDHR*, where some of the drafting committee enumerated some of the range of association and the committee ultimately arrived at a view against enumerating specific forms of association so as to avoid limiting the clause. However, to refer alongside unions only to religious association and political movements is still to refer only to specific types of organisations rather than the full range of what freedom of association can protect, which is the full social dimension of human life. Nonetheless, such *dicta* open possibilities that had tended to seem shut off by the course of development of Canada's section 2(d). It is perhaps notable that the case also references a past case where there was an unsuccessful attempt to argue economic association as having applied a "narrow" view of expression, suggesting some willingness to rethink association in contexts outside those listed in the other *dicta*.[51] The case opens room for future argument, though that will need to follow in future case law.

Nothing in this reasoning suggests that association will be without limits. Indeed, the same case itself explicitly references one key limit on association. It references the idea that, as with expression, violent association will not receive constitutional protection.[52] Thus, ongoing decisions to ban terrorist organisations, for example, will not be upset by the development of a larger freedom of association jurisprudence.

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[50] *Mounted Police* (n 5) [54]-[56].
[51] ibid [41], referring to *Canadian Egg Marketing Agency v Richardson*, [1998] 3 SCR 157.
[52] *ibid* [61]. See also *Suresh v Canada (Minister of Immigration)*, [2002] 1 SCR 3 [105], [108].