

THE IMPACT OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS ON INDUSTRIAL RELATIONS

Professor Anwar Naseer Khan
Athabasca University, Alberta, Canada

ABSTRACT

The Canadian Charter of Rights and Freedoms, passed in 1982, despite its silence on industrial relations, has become pivotal in many situations and disputes relating to employer-employee relationships. The author analyzes the recent developments and explains the impact of the court cases on industrial relations. The author's hypothesis is that, especially with regard to the provisions dealing with "freedom of association" and "freedom of expression", the Canadian Charter has been interpreted narrowly and that the Canadian courts are not prepared to state, without specific provisions in the Canadian Charter of Rights and Freedoms or the Canadian Constitution, that the right of collective bargaining or the right to strike should be enshrined as fundamental, constitutionally guaranteed rights. The author also makes some international comparisons and concludes that the preference of the Canadian courts, in keeping with industrial jurisprudence developed in countries where constitutionally protected rights are enacted, is for giving preference to corporate interests over those of labour, particularly organized labour. The article is of interest to Pakistani readers to see how entrenched and constitutionally protected fundamental rights have been construed by the courts in Canada; and what sort of difficulties and complications are likely to arise where in a written constitution, of a very recent origin, no mention is made of industrial relations or collective bargaining; nevertheless the constitutional provisions of general nature become applicable to, and are relied upon to find solutions to different types of capital-labour conflicts in, industrial law.

INTRODUCTION

As Mr. Justice Jackson J. of the U.S. Supreme Court pointed