

Karen Selick: Get the picketers off my porch

Karen Selick | 13/05/27

As someone who regularly deals with contentious issues, I prefer to keep my address and telephone number unlisted. I don't want to pick up my home phone, or answer a knock at my door and find one of the people who send me nasty emails ranting at me in person. I therefore have considerable sympathy for Elizabeth Bernard, who resides somewhere in the Ottawa area and doesn't want her employer — the federal government — to give her home address and phone number to her union.

Ms. Bernard is trying to keep her personal information from the Professional Institute of the Public Service of Canada (PIPSC), the 60,000-member union that represents government employees in her department. She is so adamant about keeping her home contact information private that she is going to the Supreme Court of Canada (SCC) on June 11 to try to persuade the court to overturn a lower court's decision, which held that her employer must hand her information to the union.



A woman is trying to keep her personal information from the Professional Institute of the Public Service of Canada. Peter J. Thompson/National Post

And if you think going head-to-head against a powerful union like PIPSC is courageous, get this: Ms. Bernard — who is not a lawyer herself — is representing herself at the SCC. Now that's spunk.

Ms. Bernard has chosen not to belong to PIPSC. She is legally entitled not to join, although this freedom doesn't help her much, since she is still forced to pay union dues for the supposed benefits of union representation. (That rule, called the "Rand formula," was established by Supreme Court justice Ivan Rand in a 1946 decision.)

Nevertheless, Ms. Bernard is entitled to eschew union membership if she wishes, which means she doesn't get to vote on internal union matters such as the election of officers or the use of her involuntarily paid union dues. However, the union can (and does) communicate with her at her workplace when it needs to provide information about employment-related subjects. She has never objected to PIPSC having her office contact information.

I suspect — although I've never asked her and she has never disclosed this — that Ms. Bernard might find herself in frequent disagreement with many PIPSC members on a wide variety of union-related issues, and therefore prefers to avoid that sort of stressful conflict when in the privacy of her own home.

The homes of 10 non-striking employees were picketed by union members who were shouting and swearing

In the written material she submitted to the SCC, Ms. Bernard cites a couple of cases where individuals have been harassed at their homes by union members.

In one, an Ontario government employee complained that her home was picketed by her co-workers after she chose to work during a strike called by the Ontario Public Service Employees Union. Her name was placed on a “scab list” and circulated to her neighbours. She was followed from her home to her son’s school. And messages were left on her telephone answering machine by people calling themselves “the Oshawa mob.”

In the case of a strike at Telus Communications in Alberta, the homes of 10 non-striking employees were picketed by union members who were shouting and swearing at them.

Ms. Bernard will be arguing that freedom of association includes freedom from unwanted association

The SCC has itself noted that, “the history of labour relations in Quebec is rife with violence.” Quebec is not alone in this. Labour relations across the country have occasionally been characterized by violence, threats, intimidation and trespassing.

The Canadian Charter of Rights and Freedoms guarantees Canadians a constitutional right to freedom of association. Ms. Bernard will be arguing that freedom of association includes freedom from unwanted association.

If her home contact information is given to the union without her consent, then she cannot be free from association with the union, should it attempt to contact her at home. She will also argue that the disclosure of personal information would violate the Privacy Act, enacted 30 years ago precisely for the purpose of ensuring that the federal government respects the privacy needs of individuals.

The court’s ruling could have a profound impact on labour relations in Canada and will be awaited with great interest.

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Karen Selick is the litigation director for the Canadian Constitution Foundation, which has been granted intervener status in Elizabeth Bernard’s upcoming case at the Supreme Court of Canada.

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