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## Supreme Court Uses Doctrine of Stare Decisis To Prevent Re-Litigation of Claims

THE SUPREME COURT OF CANADA HAS RECENTLY SUGGESTED THAT, IN CERTAIN CIRCUMSTANCES, A PARTY CAN ALSO RELY ON THE DOCTRINE OF *STARE DECISIS* TO DISMISS AN ACTION AT A PRELIMINARY STAGE WHERE THE ISSUES IN THE ACTION HAVE ALREADY BEEN ADJUDICATED BY A HIGHER COURT IN A PREVIOUS DECISION AND THE STRICT REQUIREMENTS OF *RES JUDICATA* ARE NOT MET.

Although this case deals with the *Quebec Civil Code*, there is no good reason many of the principles could not be imported into Canadian common law.

In *Attorney General of Canada v. Confédération des Syndicats Nationaux*, 2014 SCC 49, the federal government reformed the employment insurance program in 1996 by changing the mechanism for setting the premiums payable by workers and employers who contributed to the program. These reforms were made pursuant to the *Employment Insurance Act*, S.C. 1996, c.23 (the "1996 Act"). In 1998 and 1999, various Quebec unions sought to strike certain sections of the 1996 Act as unconstitutional. The basis for the challenge was that the annual surpluses created by the new premium-setting mechanism were being reallocated by the government to its budget deficit reduction. The unions argued that this

was a misappropriation of the monies that were supposed to be earmarked for employment insurance.

In December, 2008, the Supreme Court of Canada held that the measures adopted in the *1996 Act* were valid and constitutional, with certain exceptions (the "2008 SCC Decision").

In July, 2010, Parliament enacted the *Jobs and Economic Growth Act*, S.C. 2010, c.12 (the "2010 Act"). The 2010 Act provided for the closure of the employment insurance account and the creation of a new Employment Insurance Operating Account. When the unions filed a motion to institute proceedings to have certain provisions of the 2010 Act declared unconstitutional, the Attorney General of Canada filed a motion to dismiss the action at a preliminary stage on the basis that the issues raised by the unions had already been decided by the Supreme Court in the 2008 SCC Decision.

The Supreme Court of Canada agreed with the Attorney General. The Court dismissed the union's action on the basis that it had no reasonable chance of success.

In doing so, the Court relied on the doctrine of *stare decisis*—a doctrine, as recognized by the Court, not typically used to dismiss actions. This doctrine provides that where the legal issues remain the same and arise in a similar context, the precedent created by the previous judicial decision “still represents the law and must be followed by the courts”.

According to the Court, the doctrine of *stare decisis* is similar to the *res judicata* exception, which also prevents parties from re-litigating issues already decided

by the Court. Under both doctrines, the legal issues raised by the applicant must have already been clearly resolved by the courts. However, unlike *res judicata*, *stare decisis* does not necessarily require “that the dispute be between the same parties. What must be established is that the issue is the same and that the questions it raises have already been answered by a higher court whose judgment has the authority of *res judicata*”.

In this case, the 2008 SCC Decision provided a complete, certain and final solution to the unions' action in this case. In the 2008 SCC Decision, the Court stated that, as government revenues, the amounts collected as contributions to the employment

insurance program could be used for purposes other than paying employment insurance benefits. This conclusion dictated the outcome of the union's current action. Accordingly, the action had no reasonable chance of success.

This case has important implications for litigants who seek to re-litigate issues already resolved by a higher or equivalent court. The decision provides defendants with yet another weapon in their arsenal to dismiss actions at an early stage, where a plaintiff brings multiple proceedings relating to the same issues and already decided in previous decisions.