Citation: Adell, Bernie, "Regulating Strikes in Essential (and Other) Services after the 'New Trilogy'" (2013) 17:2 CLELJ 413

Abstract: Labour relations statutes across Canada generally use one of three standing models for regulating essential service strikes – the "unfettered strike," "designation" and "no-strike" models. An ad hoc variant of the unfettered strike and designation models – what the author calls the "instant back-to-work" model – has recently been used several times by the federal government to circumvent the designation model in the *Canada Labour Code*. After reviewing these models, the author moves to the question of what forms of strike regulation might be held to infringe freedom of association in section 2(d) of the *Canadian Charter of Rights and Freedoms*, and therefore to need justification under section 1 as a reasonable limit on that freedom. Pierre Verge, like Brian Langille, has argued that a constitutional right to strike should simply require governments to respect the common law freedom of employees to withdraw their services without incurring criminal or tort liability, in the absence of a section 1 justification for any infringement of that freedom. This approach, the author suggests, would require excessive recourse to section 1, and would be of value mainly to strategically placed employees because it would offer no protection against employer reprisals for strike action. In his view, a right to strike should instead be held to flow from the *Charter*-based right to collective bargaining adopted in *B.C. Health* and *Fraser*. This would leave legislatures with significant discretion to regulate industrial conflict, but would require that employees who are not allowed to strike must have access to a truly independent means of resolving collective bargaining disputes. To that end, the Supreme Court of Canada should reinstate the trial judgment in the *Saskatchewan Federation of Labour* case, which held (1) that the right to collective bargaining includes a limited right to strike; and (2) that this right was unjustifiably breached by a statute which gave the provincial government the unilateral right to designate those public sector employees who could not strike, and also denied those employees access to an alternative independent dispute resolution process.