

BULLETIN

Supreme Court says BC Liberals violated Charter of Rights - Court rules in favour of health care workers, throws out sections of Bill 29

June 8, 2007

The Supreme Court of Canada issued a landmark decision today, declaring sections of Bill 29 unconstitutional.

The Supreme Court ruled that sections of the Bill amounted to -substantial interference with the unions ability to engage in collective bargaining." In the ruling, the Court throws out sections of Bill 29 and gives the provincial government 12 months to rectify the violations.

HSA President Reid Johnson says the decision is a clear win for health workers across British Columbia.

-HSA is heartened that the Supreme Court has chastised the BC Liberals for their radical and unilateral anti-union legislation," Johnson says. -The Court notes that the provincial government chose to curtail workers rights without meaningful consultation or explanation, when a range of other options was still up for discussion."

Bill 29 tore out key negotiated provisions in health and community social services agreements, eliminating job security, and allowing mass layoffs and contracting out.

For HSA members, Bill 29 reduced bumping rights, layoff notice provisions, technological change provisions and restrictions on transfer and reassignment. Members in the community social services were stunned to find hard-won Munroe award provisions swept aside, suddenly eliminating an agreement that their wages would reach parity with health workers.

Maureen Headley, HSAs Executive Director of Legal Services and Labour Relations, says HSA lawyers are analyzing the decision and its effect on grievances filed by our members. She says HSA will provide further information and analysis over the next few days.

The Decision

In a 6-1 decision, the Supreme Court decided that the BC government engaged in -substantial interference" with collective bargaining, denying bargaining and consultation in good faith:

[T]he Act . . . interfere[d] with the process of collective bargaining, either by disregarding past processes of collective bargaining, by pre emptively undermining future processes of collective bargaining, or both. . . [T]he provisions dealing with contracting out (ss. 6(2) and 6(4)), layoffs (ss. 9(a), 9(b) and 9(c)) and bumping (s. 9(d)) infringe the right to bargain collectively protected by s. 2(d). These provisions deal with matters central to the freedom of association and amount to substantial interference with associational activities. Furthermore, these provisions did not preserve the processes of collective bargaining. Although the government was facing a situation of exigency, the measures it adopted constituted a virtual denial of the s. 2(d) right to a process of good faith bargaining and consultation.

Further, the Court rejected the BC Liberals argument that Bill 29 was necessary to ensure continued health

care delivery.

The record discloses no consideration by the government of whether it could reach its goal by less intrusive measures. A range of options were on the table, but the government presented no evidence as to why this particular solution was chosen and why there was no meaningful consultation with the unions about the range of options open to it. This was an important and significant piece of labour legislation which had the potential to affect the rights of employees dramatically and unusually. Yet, it was adopted rapidly with full knowledge that the unions were strongly opposed to many of the provisions, and without consideration of alternative ways to achieve the government objective, and without explanation of the governments choices.

Building on successful rulings

In light of this victory, HSA President Reid Johnson urged continuing diligence in protecting the rights of health and community social service workers.

-This is not the first indictment of this governments unfair treatment of workers," he said. -In 2001, HSA was the first union to initiate a complaint with the International Labour Organization ... the labour body of the United Nations ... about the BC governments disregard for labour laws, affecting more than 150,000 workers in BC.

-In March 2003, the ILO found that the BC Liberal government repeatedly violated the rights of thousands of public sector employees by refusing to negotiate contracts and by using legislation to arbitrarily enforce its will," he said.

-This was an embarrassment for BC. Most governments found guilty of violating basic ILO Conventions usually have fragile democracies and a poor record on human rights.

-HSA members can be proud that this international ruling helped set the stage for this successful charter challenge."

The full text of the Supreme Court decision is available here:

<http://scc.lexum.umontreal.ca/en/2007/2007scc27/2007scc27.html>

[Printer-friendly version.](#)

Type:

[Bulletins](#)

Topic:

[Health Science Professionals](#)

[Issues, Campaigns and Government Relations](#)

- [Print](#)
- [PDF](#)

180 East Columbia
New Westminster, BC V3L 0G7

Website
www.hsabc.org

Telephone 604-517-0994
1-800-663-2017