Newsletter

Unions challenge Bill 29 before the Supreme Court of Canada

Analysis: The Court's decision, critical to workers across the country, could be many months away

The Charter challenge of the Campbell Liberals' contract-busting legislation, Bill 29, is in the hands of the Supreme Court of Canada after lawyers representing the unions and the BC government presented their arguments on February 8 in Ottawa.

The constitutional challenge was launched in March, 2002 by the Hospital Employees' Union, the BC Nurses' Union and the BC Government and Service Employees' Union, and involves both the equality and freedom of association provisions of the Canadian Charter of Rights and Freedoms.

The Supreme Court's ruling will be a critical one for workers in BC and in Canada.

Lawyers for the unions argued that Bill 29 – whether intentionally or not – negatively and disproportionately impacts women health care workers and therefore violates equality provisions in Section 15 of the Charter.

HEU's membership is more than 85 per cent women and for decades the union has placed pay equity among its top issues. Through its efforts, women's wages in BC's health care sector have improved as a result of pay equity and collective agreement provisions.

Bill 29 targeted specific, female-dominated occupational groups – mainly housekeeping and food services – by stripping away contracting-out protections and severely eroding job security provisions in their collective agreement.

Freedom of association, which covers that right to join a trade union, is already protected under Section 2(d) of the Charter. But in the late 1980s, the Supreme Court of Canada ruled that collective bargaining is not Charter protected.

In seeking leave to appeal the case to the country's highest court, the unions are raising the question of whether certain aspects of collective bargaining are protected by freedom of association provisions.

The unions argue that Charter protection of collective bargaining flows from freedom of association because collective bargaining is the reason that unions exist, and it is why individuals join unions. The unions' written submission to the Court puts it this way: "In addition, collective bar-

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gaining goes to the core of the purpose of Section 2(d) of the Charter by importing principles of democracy into the workplace."

Working people form and join unions in order to negotiate workplace terms and conditions, and, as stated in the submission, "…this activity is what makes their right to come together in the workplace meaningful."

Joseph Arvay, lead counsel for the unions, argued that Bill 29 breaches the freedom of association guarantee in two ways: it voids existing collective agreement provisions agreed to by both the unions and employers and are currently in force, and it prohibits indefinitely the renegotiation of those provisions.

The BC Teachers' Federation, the Canadian Labour Congress, the Confédération des Syndicats Nationaux and the United Food and Commercial Workers, who were granted intervenor status, expanded and supported the BC unions' arguments. In particular, they highlighted Canada's international obligations to the protection of freedom of association and collective bargaining rights.

Lawyers for the province of BC, and for the intervening provinces of Ontario and Alberta, argued that freedom of association protections do not extend to collective bargaining as different limitations are historically and currently placed on public sector bargaining by various governments.

They also argued that equality rights were not violated by Bill 29 because the legislation was designed to bring "market discipline" into BC's costly health care system.

And the legislation did not direct health employers to contract-out; it only provided the option, argued the province's counsel.

The Supreme Court of Canada is the final step in the unions' Charter challenge of Bill 29. It may be many months before the Court issues a decision.

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