



HOSPITAL EMPLOYEES' UNION

BACKGROUND

Key information on unions' Bill 29 Charter challenge

Key dates

The unions' legal challenge will be heard by the B.C. Supreme Court over eight days: April 14 to 17, and April 22 to 25. Late summer or fall is the earliest a decision can be expected.

Who's legal counsel for the unions?

Joseph Arvey is lead counsel for the unions. Arvey is a prominent Victoria lawyer with a wealth of experience in constitutional and human rights cases.

What parts of the Charter of Rights and Freedoms are the unions relying on?

The unions will argue that *Bill 29 (The Health and Social Services Delivery Improvement Act, 2002)* violates rights guaranteed under the *Canadian Charter of Rights and Freedoms*:

- **FREEDOM OF ASSOCIATION (CHARTER S. 2(D))**

Bill 29 seeks to strip away the most fundamental collective rights of unionized health care workers, which undermines the whole point of being a member of a union.

- **LIBERTY AND SECURITY OF THE PERSON (CHARTER S. 7)**

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 is concerned with Canadians' physical protection and security, as well as their emotional and psychological well being. Work is central to our sense of participation in society and our sense of self. *Bill 29* arbitrarily strips health workers of their employment, and does so without regard to the most basic principles of justice.

- **EQUALITY RIGHTS (CHARTER S. 15)**

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Bill 29 singles out for differential, inferior treatment a workforce that is predominantly female, is disproportionately old, and contains a larger proportion of visible minority members than Canadian society at large. The government intended *Bill 29* to strip away gains and benefits that this group of workers had achieved through many years of collective effort. It was driven by the perception by government that the work done by support staff in health care is "women's work" and therefore intrinsically of little value.

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What remedies are being sought?

The unions are asking the court to restore their contracts in full force, and to assess damages against the government to cover all financial and other costs to health care workers who have been impacted by *Bill 29*.

What contract provisions did *Bill 29* eliminate or impose?

Bill 29 robs health care workers of basic negotiated protections, including:

- 20-year-old, contracting-out provisions that safeguarded health services from privatization;
- basic bumping protections that have existed for 30 years, such that now a health care worker with 25 years seniority can end up on the street if she receives layoff notice; and
- labour force adjustment provisions and programs such as retraining and job placement used in the past as key elements of a kinder approach to change in the delivery of health services.

It imposes new transfer provisions that allow employers to move caregivers around at whim, both to different hospitals within one shift as well as to work sites hundreds of kilometers away for temporary assignments.

How has the government used *Bill 29* so far?

The provincial government has relied on *Bill 29* to close 50 health facilities across B.C. – many in small rural communities. These include outright closure of hospitals or long-term care centres, and those that have been targeted for closure or effectively closed because of severe service cuts.

Several health authorities have used *Bill 29* to sign 10-year laundry contracts with a U.S.-owned company – one of which involves trucking laundry to Alberta. Long-term care employers have used the law to contract out support services. And as the case goes to trial, some 5,000 health care workers face job loss as health authorities are poised to sign privatization deals with corporations to provide housekeeping, dietary and security services.

What unions are involved?

The legal challenge is a coordinated effort on behalf of unionized B.C. health care workers. It has been launched by health care bargaining associations representing health and support workers in facilities, registered nurses and registered psychiatric nurses and health and support workers in the community. It is being led by the largest unions in each association: the Hospital Employees' Union (CUPE), the BC Nurses' Union, and the BC Government and Service Employees' Union. A separate action has been launched by the Health Sciences Association on behalf of paramedical professionals. It will be heard at a later date.

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