

# NEWS RELEASE



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## Supreme Court strikes down Bill 29 provisions in landmark ruling

The Supreme Court of Canada has ruled that sections of Bill 29, the *Health and Social Services Delivery Improvement Act*, violate the Canadian Charter of Rights and Freedoms.

In a groundbreaking ruling extending the freedom of association provision of the Charter to include the right to free collective bargaining, the Court struck down key sections of the 2002 law that restricted and gutted the bargaining rights of health care workers.

It's a decision that has widespread implications for unions across the country.

The Supreme Court has given the B.C. Liberal government one year to bring the legislation into compliance with the Charter, but Hospital Employees' Union secretary-business manager Judy Darcy says the crisis created by Bill 29 in health care should not be allowed to continue one day longer.

"The verdict has been in on Bill 29 for the last five years – it's a bad law that's wreaked havoc in health care," says Darcy. "Now the highest court in the land has declared that this law violates the constitutionally-protected charter rights of our members.

"Hundreds of workers are currently facing termination in long-term care facilities as a result of this legislation," says Darcy. "In the interests of the continuity of care for seniors and fairness to workers we're demanding the government declare an immediate moratorium on these layoffs."

Bill 29 eliminated collective agreement provisions for health care workers and paved the way for massive job losses and privatization.

The controversial and unprecedented law excludes health and community social services workers from labour laws that protect other workers in the province. And it eliminated collective agreement provisions that safeguarded workers and services from privatization.

BC Nurses' Union president Debra McPherson says today's Supreme Court decision "restores important collective bargaining rights to health care workers regarding protection against layoffs and contracting out.

"Governments can no longer unilaterally rip up collective agreements in order to promote a privatization agenda that cuts services to the public and erodes employees' living standards. And for the first time it recognizes that collective bargaining is a right of all Canadians protected by the Charter of Rights and Freedoms."

B.C. Government and Service Employees' Union president George Heyman says free collective bargaining has been critical to the protection of health care and decent jobs.

"Workers have fought for free collective bargaining for decades," said Heyman. "This decision confirms that right is encompassed and protected by the Canadian Charter of Rights and Freedoms and cannot be arbitrarily trampled on at the whim of government."

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Up to 8,000 health care workers were fired in the B.C. Liberal government's first term as a result of Bill 29, which also facilitated the most extensive privatization of health services in Canada.

Cleaning, dietary and other hospital support services in the province's largest population centres were contracted out to multinational corporations which in turn slashed wages by half causing high staff turnover and undermining service quality.

The legislation has also encouraged the chronic flipping of commercial contracts between long-term care operators and their sub-contractors as they seek to undermine collective bargaining and keep wages low.

Darcy says that Bill 29 has not only destabilized health care delivery but has caused massive disruption for the thousands of workers who lost their jobs.

"This ruling is a total repudiation of government's unilateral and mean-spirited approach to health care workers," says Darcy.

"The damage this legislation caused to the lives of union members and their families continues to be felt. Many lost their homes. And the financial stress often led to family breakdown and other personal hardships," says Darcy. The unions say that government needs to consult with them before it takes action to bring Bill 29 in compliance with the Charter.

Health unions led by HEU, BCGEU and BCNU launched their charter challenge in 2002.

In its ruling this morning, the Supreme Court of Canada found that sections of Bill 29 dealing with the elimination of contract protections against contracting out and the rights of senior employees to bump more junior employees in the event of a reduction in the workforce - interfered with the collective bargaining process.

Earlier, the B.C. Supreme Court and the Appeal Court of B.C. ruled against the unions but the Supreme Court of Canada granted leave to appeal the rulings of the lower courts and the hearing was held in February 2006.

The unions argued that the legislation violated the equality and freedom of association provisions of the Canadian Charter of Rights and Freedoms.

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Backgrounder attached.

## Key information on health unions' *Bill 29* Charter challenge

### January 28, 2002

*Bill 29* eliminates negotiated protections for unionized health care and community social services workers, including:

- 20-year-old, contracting-out provisions that safeguarded health services from privatization;
- basic bumping provisions that have existed for 30 years, and
- labour force adjustment provisions and programs such as retraining and job placement.

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

### March 19, 2002

B.C. unions representing more than 100,000 health care workers launch legal action in B.C. Supreme Court alleging that the Campbell government's contract-breaking legislation – the *Health and Social Services Delivery Improvement Act (Bill 29, January 28, 2002)* is unconstitutional and violates the *Canadian Charter of Rights and Freedoms*.

#### **Freedom of association (*Charter S. 2 (D)*):**

*Bill 29* eliminates the most fundamental collective rights of unionized health care workers – including exempting health care workers from successorship provisions contained in the *B.C. Labour Code* that apply to all unionized workers in any industry sector – and undermines the whole purpose of being a member of a union.

#### **Equality rights (*Charter S. 15*):**

*Bill 29* – whether intentionally or not – negatively and disproportionately impacts women health care and community social services workers, and therefore violates the Charter's equality provisions. The legislation targets specific, female-dominated occupational groups by removing contracting-out protections and severely eroding job security provisions in their collective agreements.

### March 2003

The International Labour Organization (ILO), a United Nations agency, concludes that *Bill 29* violates international conventions that protect workers' rights to freely associate and organize.

The ILO calls on the B.C. government to repeal or rewrite the laws to bring them into line with international labour standards.

Government fails to comply.

### September 2003

B.C. Supreme Court dismisses unions' constitutional challenge; unions appeal.

### **November 2003**

B.C. government passes *Bill 94* – the *Health Sector Partnerships Agreement Act* – which extends *Bill 29* by allowing private-sector companies to cancel commercial health support and care services contracts and terminate staff repeatedly in order to avoid unionization and collective agreements that would improve wages and working conditions.

### **2002 – 2003**

*Bill 29* precipitates the first wave of health privatization in the province resulting in the closure of more than 50 health facilities, including hospitals and long-term care centres, and the contracting out of hospital security, laundry, housekeeping and dietary services in the Vancouver Coastal, Fraser and Vancouver Island health authorities.

Unionized staff in seniors' care facilities across the province are also laid-off as operators sign support and care services deals with newly-formed private contractors.

Up to 8,000 health care workers – the vast majority women – lose decent, family-supporting jobs in what is the largest mass firing of female workers in Canadian history.

### **July 2004**

B.C. Court of Appeal upholds B.C. Supreme Court ruling; unions petition the Supreme Court of Canada for leave to appeal.

### **March 2005**

The International Labour Organization (ILO) concludes that *Bill 94* violates international conventions that protect workers' rights to freely associate and organize, and again calls on the government to repeal or rewrite the laws to bring them into line with international labour standards.

Government fails to comply.

### **April 2005**

Supreme Court of Canada announces it will hear the unions' Charter challenge.

### **February 2006**

The Supreme Court of Canada hears the case.

### **2006 – 2007**

Long-term care operators and sub-contractors continue to use *Bill 29* and *Bill 94* to flip contracts and avoid union collective agreements and reduce wages.

More than 650 care staff are laid off at five long-term care facilities in May 2007.

### **May 2007**

In less than one month, more than 650 care aide staff are laid off at five long-term care facilities in Nanaimo and the Lower Mainland.

### **June 8, 2007**

The Supreme Court of Canada renders its decision.

*June 8, 2007*