



Bill 29 Supreme Court ruling – what does it mean?

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

This decision establishes for the first time that workers in Canada have a charter-protected right to free collective bargaining. And it recognizes that when they passed *Bill 29* in 2002, B.C.'s Liberal government violated health care workers' rights under the "freedom of association" provisions of the charter.

What does government have to do now?

The Supreme Court gave the government one year to address the repercussions of its decision. After that time, the sections of *Bill 29* that violated the charter will become null and void.

The Supreme Court decision said that unions have a right to meaningful consultation and negotiation before important contract rights are interfered with. Government must now sit down with the various bargaining associations and engage in good-faith negotiations about the future of *Bill 29*.

The Facilities Bargaining Association (FBA), the Community Health Bargaining Association, the Nurses Bargaining Association and the Health Science Professionals Bargaining Association will negotiate separately with government and health employers on issues that are specific to their collective agreements and their membership.

All four bargaining associations will meet jointly with government to discuss common issues, as well as changes in legislation needed to bring government laws into compliance with the charter.

As the union most impacted by *Bill 29*, HEU is leading negotiations for the FBA. In these negotiations, HEU is asserting our members' charter rights to collective bargaining and will be seeking redress for current and past members impacted by *Bill 29*.

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The negotiation process is currently expected to continue until December. Government has said that they hope to introduce new legislation, which will bring *Bill 29* in-line with the charter, during the spring sitting of the legislature.

Can the government appeal this decision?

No. The Supreme Court of Canada is the highest court in the country and its decisions cannot be appealed.

What does it mean when government says the Court's decision is "prospective" only?

Unions and government have different interpretations of the Court's decision. Government has said it is prospective only, which means it applies only in the future.

The unions' position is that the decision is retroactive and that any negotiated agreement must recognize *Bill 29*'s impact on people's work and personal lives.

Can HEU go back to the Supreme Court to get clarification about redress and the decision's retroactivity?

Both the unions and the government have to interpret the Court's decision as it was handed down. If the unions and government cannot agree on redress, we will have to go to the courts for a ruling, starting at the B.C. Supreme Court.

Is it possible that the government will negotiate with the unions and then go ahead and draft legislation just like *Bill 29*?

The Supreme Court told government and the affected unions that they have a duty to consult and engage in good-faith negotiations. If government fails to do so, the matter will in all likelihood return to the courts.

However, HEU intends to put every effort into achieving a negotiated settlement.

What will happen to members' *Bill 29*-related grievances?

Those members who filed grievances as a result of *Bill 29* will be covered by any compensation or restitution that is achieved in negotiations with government. Their grievances would then be considered settled.

I lost my job because of *Bill 29*, will I get compensation or an opportunity to have my job back?

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HEU has stated that redress and compensation for those impacted by *Bill 29* should be central to any negotiated agreement with government.

I am an HEU member who works for Sodexo, Aramark or Compass. What does *Bill 29* mean for my job?

HEU is committed to protecting the interests of all its members. HEU members who work in contracted services know better than anyone the damage that privatization has caused to wages, working conditions and health care delivery.

That's why HEU supports the public delivery of health services and is working to ensure that current and past members who want to work in health care have an opportunity to do so.

There is a serious shortage of health care workers in B.C. so we can't afford to lose experienced workers.

Does this decision mean that members in the facilities subsector will get their 15 per cent wage rollback returned?

The legislation that rolled back wages in 2004 was *Bill 37* – the *Health Sector (Facilities Subsector) Collective Agreement Act*. It was not part of the charter challenge against *Bill 29*, which was launched in 2002.

HEU is consulting legal counsel to determine whether there is a case to pursue a separate court challenge of *Bill 37*.

Will the union be taking the government to court over *Bill 94*?

Bill 94 – the *Health Sector Partnerships Agreement Act* – applies to for-profit employers in the health sector that have been designated by an order of the provincial cabinet (for example: P3 hospitals and certain long-term care facilities). *Bill 94* extends to those designated “partners” the same contracting-out powers that *Bill 29* provides to health employers.

Some sections of *Bill 94* are the same as those in *Bill 29* that were struck down by the Court.

HEU is consulting legal counsel about filing a separate legal action against *Bill 94*.

Can the government continue to allow contracting out in health care, while they are negotiating with HEU and other unions?

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Government has not committed to stop contracting out. Government has committed to a suspension of some layoffs during the *Bill 29* negotiations.

Until there is a negotiated agreement or future legislation that addresses the matter, government has said there will be no further involuntary layoffs, as a result of contracting out by health authorities or their affiliates covered by the current facilities agreement.

The privatization of 66 plant maintenance and food services positions at MSA Hospital in Abbotsford will also be suspended.

Request-for-Proposal (RFP) documents for hospital public-private partnership (P3) projects in the Okanagan, Surrey and Victoria issued in the last few weeks contain clauses binding health authorities to the terms of any future agreements or legislation related to the implementation of *Bill 29* that affect members' jobs.

However, government representatives have said they will not declare a moratorium on layoffs related to the flipping of commercial contracts in long-term care.

How will the union keep current and past members up-to-date about the negotiations?

HEU will be using several methods to communicate about the *Bill 29* negotiations. As soon as updates are available, they will be posted on the *Bill 29* section of the HEU website. For those who were laid off or otherwise affected by *Bill 29*, the union will be organizing a series of special meetings. Information about those meetings will be available on the HEU website and will be distributed through mailings to locals and individuals.

Servicing representatives will also be providing *Bill 29* negotiation updates at local meetings.

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