

BC Supreme Court Strikes Down Legislation Limiting Teachers' Bargaining Rights

The BC Supreme Court has struck down provincial legislation that limits teachers' rights to bargain with their employers about class size and related issues: [British Columbia Teachers' Federation v. British Columbia 2011 BCSC 469](#)

The Court considered 2002 legislation that, among other things, removed class size and related provisions from the provincial teachers' collective agreement and precluded teachers from bargaining about such issues in the future. The Court declared those aspects of the legislation unconstitutional because they infringed teachers' rights to free association guaranteed by section 2(d) of the Canadian Charter of Rights and Freedoms. The Court suspended its declaration for 12 months to allow the Province time to address the ramifications of the decision. The Province has the option of appealing the decision.

In 2002, when the legislation at issue was enacted, Canadian courts had consistently held that the Charter right to free association did not guarantee collective bargaining rights. The Supreme Court of Canada reversed that law, however, in 2007 when it decided that legislation that substantially interferes with the process of collective bargaining may violate Charter rights to free association: *Health Services and Support v. British Columbia, 2007 SCC*.

The Court followed those new tests and decided that:

- the legislation interfered with the process of collective bargaining by voiding negotiated collective agreement terms and prohibiting future bargaining about those matters; and
- the interference was "substantial" because:
 - teachers had long sought to bargain about class size as a high priority "working condition" for teachers; and
 - Government had not consulted with BCTF about the proposed legislation in advance.

The Court further held that the legislation was not justified under section 1 of the Charter because Government failed to prove that its approach minimally impaired teachers' collective bargaining rights. In other words, the Court was not convinced that it was necessary to eliminate teacher bargaining rights on class size and related issues in order for Government to achieve the increased flexibility that it sought.

The Court reached a very different conclusion with respect to other 2002 legislation included in the BCTF's challenge. That legislation consolidated pre-existing local collective agreement provisions following the combination of certain school boards. The BCTF argued that the legislation violated teachers' section 2(d) Charter rights because it eliminated some local collective agreement terms and substituted others in their place without prior consultation or bargaining. The Court ruled that the consolidation legislation did not constitute a "substantial interference" in the process of collective bargaining because:

- teachers continued to be governed by local collective agreement terms that had been freely bargained (albeit for another location);
- the application of certain local terms was temporary as the terms could be addressed in later bargaining;
- there was no impact on provincial collective agreement terms already applicable to all teachers; and
- the legislation did not undermine the role of the union or the utility of collective bargaining.

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