

Backgrounder: Frequently Asked Questions — BC Supreme Court Decision in Bills 27 and 28

April 15, 2011

We have received a number of questions with respect to the Supreme Court of BC decision issued earlier this week in the BC Teachers' Federation (BCTF) court challenge regarding the constitutionality of the 2002 legislation enacted by the provincial government — Bill 27, the *Education Services Collective Agreement Act*, and Bill 28, the *Public Education Flexibility and Choice Act* (see our [Backgrounder](#) dated April 13, 2011, which contains a summary of the decision).

1. Does the decision mean that all of the pre-2002 collective agreement provisions are now back in the collective agreement?

No. While the court found that removing those provisions through Bill 19, the *Education Services Collective Agreement Act* in 2004 was unconstitutional, the declaration that their removal was “invalid” is suspended for 12 months. This means nothing happens until either the government takes action or 12 months elapse, whichever is earlier.

2. How does this impact school calendars?

The court found that s. 78.1(1) and (2) of the *School Act*, which prohibited a collective agreement from restricting the board's ability to adopt and implement an alternate school calendar, were unconstitutional but suspended the invalidity of those provisions for 12 months.

3. Why did the court suspend the declaration of invalidity for 12 months?

The decision that certain provisions were unconstitutional is largely based on the court's finding that the BCTF was not consulted properly prior to the legislation being enacted. The 12 month time period gives the government time to decide its policy moving forward, and then time to implement that policy by either engaging the BCTF in the appropriate consultation process or, if it chooses, allowing the pre-2002 collective agreement provisions to be added back into the collective agreements.

4. Does this mean that the class size provisions of the *School Act* are no longer applicable?

No. The class size and composition provisions of the *School Act*, introduced by Bill 33, the *Education (Learning Enhancement) Statutes Amendment Act* in 2006, were not challenged by the BCTF and remain intact.

5. How does the decision impact the collective agreements in amalgamated districts?

There is no change. The court confirmed that the legislation, which determined the applicable collective agreement in amalgamated districts, was constitutional.

6. What redress is the BCTF entitled to?

None at this time. This may be subject to another proceeding at a later time.

7. We are in the process of budgeting for next year. Do we have to budget to meet the class size limits in our collective agreement from 2001?

No.