

Information Update: BCTF Appeal to Supreme Court of Canada

On November 10, 2016, the Supreme Court of Canada (SCC) will hear the BC Teachers' Federation (BCTF) appeal of a 2015 BC Court of Appeal decision that held that the BC government did not violate the *Charter of Rights and Freedoms (Charter)* when it passed the *Education Improvement Act (Bill 22)*, which removed provisions regarding class size and composition from the Provincial Collective Agreement (PCA) between BCPSEA and the BCTF.

What is the central issue of the BCTF appeal?

The SCC is expected to address whether governments can legislate changes to existing collective agreement terms and, if so, what process must be followed before such legislation can be enacted.

What the case IS about

- The case will consider whether consultations between the BC government and BCTF prior to Bill 22 being enacted provided the union with a meaningful opportunity to advance its members' workplace goals.
- The decision may affect government's ability to pursue public policy objectives through legislation that impacts provisions in a collective agreement, including at the point of bargaining impasse. The decision will likely have implications for public sector bargaining throughout Canada.

What the case is NOT about

- The case is **not** about what is or is not an appropriate policy approach to class size and composition — both sides have asked the Court **not** to address the merits of education policy.
- The case is **not** about whether the BCTF has a right to bargain class size and composition — these issues can be, and were, the subject of negotiations in the last round of bargaining.

When will the SCC release its decision?

While many SCC judgments are released within 6-12 months of the appeal being heard, the timing is entirely within the Court's discretion and a judgment could be released in less than 6 months or more than 12 months.

What happens if the Court's decision restores some or all of the deleted class size and composition provisions to the Provincial Collective Agreement?

The 2013-2019 PCA includes two provisions that will minimize disruption to the education system if some or all of the deleted provisions are restored:

1. **Grievances already resolved:** in return for increased preparation time and a one-time payment of \$105 million, the BCTF agreed to withdraw all past class size and composition grievances and not file new ones.
2. **"Re-opener" clause:** if the Court restores some or all of the deleted clauses, the collective agreement may be "reopened" so that the parties can negotiate the issue of class size and composition. During any such negotiations, the current approach to class assignment and teacher workload, including the use of the "Education Fund," will continue.

Next Steps

This update is strictly for your information; **no immediate action is required**. BCPSEA is working closely with school districts as well as the Ministry of Education to respond to the SCC decision when it is released.

Background for reference

- In 2002, the BC government passed the *Public Education Flexibility and Choice Act* (Bill 28), which removed language regarding class size and composition from the Provincial Collective Agreement (PCA) between BCPSEA and the BCTF and prohibited future collective bargaining about these issues.
- Bill 28 was challenged by the BCTF, which asserted that it violated the union members' right to freedom of association under the *Charter*. This challenge was successful and Bill 28 was struck down by the BC Supreme Court in 2011. The government was given 12 months to respond to the Court's decision, after which Bill 28 would become inoperative and the contested language regarding class size and composition would be restored.
- Over the 12 months following the Court's decision, the BCTF and the government met to discuss the implications of the decision but were unable to reach a resolution regarding the issues that it raised.
- Prior to the 12 month period following the Court's decision, the government passed Bill 22, which clarified that the contested class size and composition provisions would not be automatically restored in the PCA. Bill 22 also permitted negotiation regarding class size and composition in future rounds of collective bargaining.
- As with Bill 28, Bill 22 was also promptly challenged by the BCTF as a violation of its members' right to freedom of association under the *Charter*.
- The BCTF challenge to Bill 22 was initially successful at the BC Supreme Court, which held that the legislation violated BCTF members' *Charter* right to freedom of association. This conclusion, however, was overturned by the BC Court of Appeal, which found that Bill 22 did not breach the *Charter*.
- The main difference between the decisions of the two levels of court related to the relevance of the consultation process that took place between the government and the BCTF prior to Bill 22 being enacted. The BC Supreme Court held that this process was irrelevant, or in the alternative insufficient, as it did not provide the BCTF with a meaningful opportunity to advance its members' workplace goals before Bill 22 was passed. The Court of Appeal disagreed, holding that the consultation that took place was indeed relevant and that it was meaningful and sufficiently respectful of the BCTF members' rights under the *Charter*.