

Victory For BCTF \$2 Million in damages may not be the worst of it

written by Rory Lodge | February 2, 2014



Everybody knows by now that the B.C. Teachers' Federation has been awarded \$2 million plus costs against the B.C. Government related to the dispute over class sizes. The B.C. Supreme Court ruled that the government simply duplicated previous legislation that had been declared unconstitutional. The court had harsh words for the government, essentially finding that the government ignored the court's previous orders and that it had tried to provoke a strike by the teachers, supporting the court's \$2 million damage award, and likely a few hundred thousand in costs to be paid.

The cost to the public purse is bad enough but there are other aspects of the decision that may have longer and more important effects on employers. This takes us into the relatively esoteric area of freedom of association under the *Charter of Rights and Freedoms*, which includes several cases where unions are attempting to turn collective bargaining and strike action into constitutionally guaranteed fundamental freedoms.

The significance of this latest decision may be in its interpretation of the government's duty to consult before legislating. The earlier cases suggested that government could legislate to limit public sector bargaining rights after consultation about alternatives with the affected unions. The B.C. Teachers' Federation decision suggests that this will not be sufficient, that there must be a mechanism in the new legislation for "an employees' association to make representations to the **employer** and have its views considered in good faith" (emphasis in the original at paragraph 66.) It may also mean that the government has less legislative freedom when it is not technically the employer (as with the teachers) than when it is legislating with respect to its own employees.

This decision may not have an immediate and direct impact on private sector employers, but it all goes into the mix of how broadly the freedom of association rights under the *Charter* may be interpreted, which is something of interest to all employers.

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