

Court orders B.C. to restore class sizes and pay \$2 million in damages to teachers

The legal fight began in 2002, when the Liberals enacted laws to give schools flexibility in organizing classes.



BCTF president Jim Iker speaks at a press conference regarding teachers in Vancouver on January 26, 2014. Photograph by: Wayne Leidenfrost, PNG

Tracy Sherlock and Rob Shaw, Vancouver Sun, January 27, 2014

A court ruling on Monday will force the provincial government to either pour more money into the education system or lean on cash-strapped school districts to make even tougher financial decisions to balance their books.

The B.C. Supreme Court ruled that the province must retroactively restore class size and composition language that was removed from teachers' contracts in 2002, and pay the B.C. Teachers Federation \$2 million in damages.

It's a great day for democracy, a great day for all working people across Canada, and it's a great day for citizens of British Columbia," said BCTF president Jim Iker. "The government can't just break the law. They can't just violate the rights of people through legislation."

Iker said that in 2002, kindergarten class sizes were capped at 20 students, while Grades 1 to 3 were capped at 22. Today, those limits are 22 and 24, so each primary class will have to go down

by two students. In 2002, class sizes for Grades 4 to 12 were negotiated by each school district, so there was no consistency across the province, Iker said.

In addition, in 2002 the contract included specific ratios for specialist teachers such as librarians and special-ed instructors, and rules about the numbers of special-needs children that could be in the same classroom. Some of those limits were provincial and others were negotiated within each district.

Iker would not speculate on the cost of restoring these limits, which presumably would mean hiring more teachers, but since 2002 B.C. has lost 1,400 specialist teachers, while close to 700 special-education teachers, more than 100 counsellors and 300 teacher-librarians have been cut from the system.

The total number of students in the province has also changed since 2002, however, so it is not clear how many of those positions would have been eliminated due to declining enrolment. This year, there are 558,985 students attending public schools in B.C. In 2002, there were 621,200 students.

Vancouver Board of Education chairwoman Patti Bacchus said she is not sure what the decision will mean for local school boards, but is hopeful it will at least provide clarity for future contract negotiations.

"We're in this wait-and-see (period), praying that this doesn't cost school boards money," Bacchus said. Although she said no one seems to agree on what reinstating the 2002 contract language will cost, she is certain the Vancouver school district cannot afford it without additional provincial funding.

"We won't be able to do that with the current funding levels. I don't even know if it would be mathematically possible, even if we only had teachers and nothing else in the whole system," Bacchus said.

Justice Susan Griffin said in her judgment that legislation the government passed in 2012, known as Bill 22, was "virtually identical" to Bill 28, which she had previously ruled to be unconstitutional. Since both bills violated teachers' constitutional rights by removing class size and composition clauses, and prohibiting them from bargaining on these issues, they were deemed to have never been valid.

"This means that the legislatively deleted terms in the teachers' collective agreement have been restored retroactively and can also be the subject of future bargaining," the judgment stated. Griffin called for the government to pay the teachers' federation \$2 million in damages for extending the unconstitutional legislation to June 2013.

Education Minister Peter Fassbender said he was disappointed with the ruling, but it will be "business as usual" in classrooms until the government reviews the judgment and studies its

implications. He said it would be premature to say whether the government will appeal the decision.

The judge said the government did not negotiate in good faith with the teachers during the 2012 school year.

"One of the problems was that the government representatives were preoccupied by another strategy. Their strategy was to put such pressure on the union that it would provoke a strike by the union."

The government and the BCTF are now back at the bargaining table because the teachers' contract expired on June 30, 2013.

Fassbender said the government is not trying to goad the teachers into a strike.

"The reality is that every meeting I've had with the BCTF has been about finding collaboration and cooperation," Fassbender said. "Our government does not have an agenda to create disharmony. (Our agenda is) to talk about ... long-term stability."

NDP education critic Rob Fleming called Monday's ruling an indictment of the Liberal government's last 10 years on the education file.

"This is a real blow to the Liberals' credibility, especially when their rhetoric is around achieving educational stability," Fleming said.

The judgment comes on the same day that the BCTF held a news conference to mark the 12th anniversary of the original Bill 28, saying an entire generation of students has been shortchanged by the changes.

"Children who were in kindergarten in 2002 when government illegally stripped class-size and class-composition language from our collective agreements are now in Grade 12," Iker said. "The result is those students, an entire generation of B.C. kids, have spent their whole K-12 education in larger classes with less one-on-one time and less support from specialist teachers like counsellors and special-education teachers."

Iker was joined by Eric Munshaw, a 59-year-old Chilliwack technology teacher, who said he is retiring early because he is fearful for the safety of children taking shop courses in classes with as many as 30 students.

"We've always said the situation is dangerous," Munshaw said. "We've got 12-to-18-year-olds using industrial equipment."

B.C. Teachers' Federation wins \$2M in damages from province

Court rules province stripped teachers' bargaining rights and failed to reinstate them when ordered

CBC News, January 27, 2014

A B.C. Supreme court justice has ordered the province to pay \$2 million in damages for stripping teachers of their collective bargaining rights and failing to reinstate them when ordered by the court.

The decision follows the court's ruling in April 2013 that provincial legislation interfering with teachers' bargaining rights was unconstitutional and a breach of Section 2 of the Charter of Rights and Freedoms, which guarantees freedom of association.

'In order to provide an effective remedy in relation to the government's unlawful action, the government must pay the BCTF damages of \$2 million'- *B.C. Supreme Court Justice Susan Griffin*

At the time, the court found the legislation deleted certain bargaining terms and prohibited bargaining having to do with a wide range of working conditions, including class size and composition and support for special needs students.

"The freedom of workers to associate has long been recognized internationally and in Canada as an important aspect of a fair and democratic society. Collective action by workers helps protect individuals from unfairness in one of the most fundamental aspect of their lives, their employment," writes B.C. Supreme Court Justice Susan Griffin.

Griffin says usually when legislation is declared unconstitutional by the court, it is struck down. But the court decided to give the government 12 months to address the repercussions of its decision.

Instead, Griffin says, the government brought in Bill 22 — virtually identical legislation involving "the deletion and prohibition of hundreds of collective agreement terms on working conditions."



Teachers stage rally against back to work legislation imposed under Bill 22, March 6, 2012, which has been ruled unconstitutional by the B.C. Supreme Court for a second time resulting in court ordered damages against the government.

However, Griffin writes, the legislation deleted by government is not deleted at all and is, in fact, a part of the collective agreement.

"This means that the legislatively deleted terms in the teachers' collective agreement have been restored retroactively and can also be the subject of future bargaining," she writes.

"It is appropriate and just to award damages against the government, pursuant to Section 24 of the Charter," Griffin concludes.

"In order to provide an effective remedy in relation to the government's unlawful action, the government must pay the BCTF damages of \$2 million."