



News Release

FOR IMMEDIATE RELEASE

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SUPREME COURT UPHOLDS RIGHTS OF WORKING PEOPLE TO ORGANIZE AND TO BARGAIN

The Supreme Court of Canada today, delivered a long-awaited decision reinforcing the constitutional rights of working people. Consistent with a 2007 decision that identified similar rights, the decision confirms that working people have the rights both to organize into unions and to negotiate with employers collectively.

“This decision is of great significance to working people in Saskatchewan, and to all citizens” said Larry Kowalchuk, general counsel for the Retail Wholesale and Department Store Union. “The Supreme Court remains firm in its previous warnings to governments that ‘Charter rights must be interpreted in light of Canadian values and Canada’s international and human rights commitments.’”

In a decision released in March of 2010, a decision consistent with the findings of the Supreme Court, the United Nations International Labour Organization (ILO) directed the Saskatchewan Government to fix its Bill 5, *The Public Service Essential Services Act*, and Bill 6, Amendments to the *Trade Union Act*. The ILO found that both pieces of legislation violate international law and the human rights of working people in Saskatchewan.

“There can be no doubt, especially in light of today’s decision, that the two laws are unconstitutional,” said Bob Bymoer, President of SGEU. “We call on the Wall government to immediately repeal Bills 5 and 6 and to sit down with us to discuss any proposed changes to labour legislation in our province.”

“We are looking to have meaningful discussions with the government, in good faith, about the changes to unconstitutional laws that currently exist in our province,” said SFL President Larry Hubich. “It is extremely important that this government respect the rule of law, abide by the findings of the ILO, and come to the table.”

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The SFL represents over 98,000 unionized workers across the province in 37 affiliated unions.

Technical Brief

TOP COURT CONFIRMS CONSTITUTIONAL RIGHT TO JOIN UNIONS AND BARGAIN COLLECTIVELY

Working people across the province are pleased with the Supreme Court of Canada's long-awaited decision in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, in which the top Court reinforced that s.2(d) of *The Canadian Charter of Rights and Freedoms* protects workers' right to engage in collective bargaining with their employers, as it had held in its historic 2007 decision in *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391.

In a decision released today, the Supreme Court confirmed that Canadian workers have a Constitutional right to join unions and bargain collectively with their employers. In the words of Chief Justice Beverly McLachlin and Justice Louis LeBel, "legislative regimes that make meaningful pursuit of workplace goals impossible significantly impair the exercise of the s. 2(d) right to free expression and constitute a limit on the right which is unconstitutional unless justified by the state under s. 1 [of the *Canadian Charter of Rights and Freedoms*]." (para.62)

The case involved a constitutional challenge launched by the United Food and Commercial Workers Canada (UFCW) on behalf of a group of Ontario farm workers, to challenge provincial legislation that created a separate labour relations regime for agricultural workers. The majority overturned the Ontario Court of Appeal decision, which had struck down the controversial law, ruling that that "s. 2(d) does not guarantee a particular model of collective bargaining or a particular outcome." (para. 45).

However, the Supreme Court firmly rejected calls from Governments and employers to reverse its decision in *Health Services*, declaring: "*Health Services* is grounded in precedent, consistent with Canadian values, consistent with Canada's international commitments and consistent with this Court's purposive and generous interpretation of other *Charter* guarantees." (per McLachlin C.J.C. and LeBel J. for the majority at para. 97) The Majority reaffirmed that the *Charter* guarantee of freedom of association includes a right to collective bargaining, defined as "a process of collective action to achieve workplace goals," which "must be interpreted generously and purposively." (para.32)

Significantly, the Court held that the *Charter* requires employers to bargain in good faith, and may require governments to enact legislation that protects collective bargaining procedures, stating: "A purposive protection of freedom of association may require the state to act positively to protect the ability of individuals to engage in fundamentally important collective activities... individuals have a right against the state to a process of collective bargaining in good faith, and ... this right requires the state to impose statutory obligations on employers." (paras. 70, 73) This means that in collective bargaining, employers must also "avoid unnecessary delays and make a reasonable effort to arrive at an acceptable contract" (para.41).

The majority also confirmed that legislation that "makes it impossible to have meaningful negotiations on workplace matters" (para.42) will be unconstitutional, because "[l]aws or government action that make it impossible to achieve collective goals have the effect of limiting freedom of association, by making it pointless." (para. 46)

The decision is consistent with the *Charter* challenges, launched by the SFL, SGEU, RWDSU and others, to Bill 5, the *Public Service Essential Services Act*, which stripped public service unions of their ability to take effective job action, and its companion Bill 6 Amendments to the *Trade Union Act*, which abolished card-based certification and made it more difficult for employees to unionize in this province. Significantly, the Supreme Court confirmed that international law should guide courts in assessing whether legislation is constitutional, declaring: “*Charter* rights must be interpreted in light of Canadian values and Canada’s international and human rights commitments.” (para.92)

In a decision released in March 2010, the United Nations International Labour Organization (ILO) directed the Saskatchewan government to fix both laws, which it found violated international human rights.

There can be no doubt that these two laws are unconstitutional, and we call on the Wall government to immediately repeal Bills 5 and 6, and to sit down with us to discuss how we and our members will be compensated for the violation of our fundamental *Charter* rights and the resources we have been forced to devote to fighting these flawed laws.