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D/BU #134/2013-2014



Bill 115 Legal Challenge

To: District/Bargaining Unit Presidents
From: Pierre Côté, General Secretary

For Information and Distribution

Two weeks ago, the judge assigned to the OSSTF/FEESO Bill 115 Charter challenge, Justice Himmel, held a meeting or case management conference of all the lawyers representing the unions (OSSTF, ETFO, CUPE, OPSEU) involved in the case and the Attorney General lawyers representing the government. Last week, Justice Himmel issued a decision on the basis of the meeting.

During the case management conference, the Attorney-General requested an adjournment (postponement) of the June 2014 hearing dates set aside by the Ontario Court to hear the Bill 115 Charter challenge. The Attorney General's postponement request stemmed from two issues:

1. Three cases similar in nature to OSSTF/FEESO's Bill 115 case are currently being argued before the Supreme Court of Canada. The Attorney General presented the argument that the law is currently changing on the meaning of the protections for collective bargaining and strike action under s. 2(d) of the Charter. The current cases before the Supreme Court will shape and form the law and will be very instructive to the Judge hearing OSSTF/FEESO's Bill 115 challenge. They argued that on a practical basis, the Court dates in June 2014 will be wasted because all parties will have to return following the Supreme Court's decision to address the updated law;
2. Another union wishes to intervene in the Bill 115 Challenge. UNIFOR believes that it has a direct interest in the Charter Challenge because some of its members were affected by Bill 115. It has requested to join the proceeding and file materials, and wants some time to be able to do so.

We sought legal advice on the request to postpone the Bill 115 Charter Challenge. While not pleased with a postponement, the Provincial Executive accepted the advice recognizing that the Justice Himmel was likely to grant it because it made sense from a legal perspective.



Justice Himel granted the adjournment thus cancelling the hearing date initially scheduled for June 2014. While we were advised by Justice Himel last week that the matter would be adjourned until March 2015, the actual date was contested due to the unavailability of some of the parties. As a result, we are still waiting for confirmation of the actual hearing date. We anticipate that it will likely take place sometime during April 2015. Once the final date is confirmed, we will advise you.

Legal Advice

Legal Counsel was of the view that the postponement request would be granted by the Court. Counsel advised us that the postponement made sense because they are also awaiting the Supreme Court's decisions in the other cases. They wish to prepare their materials based on the legal framework established by the Supreme Court with respect to s. 2(d) and the law is not clear right now. All of the other union lawyers came to the same conclusion.

We do not know when the Supreme Court of Canada will release its ruling on the cases raising the s. 2(d) issues. These rulings sometimes take up to eight or nine months depending on the complexity of the issues. These cases are complex because they are defining under our Charter of Rights and Freedoms what protections unions and their members have to participate in free and fair collective bargaining and strike action without intrusive and oppressive government intervention.

Bringing a Charter case before the court is a challenging undertaking. OSSTF/FEESO, in working with its other union partners, is committed to bringing the strongest case forward possible. While this delay is disappointing, we believe it will better assist us in defending the rights of our members.

Please contact Pierre Côté should you have any questions.