

# The Steward

NEWS AND INFORMATION FOR BCGEU STEWARDS

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## BILL 29 – Health and Social Services Delivery Act destroys collective agreements

by Ken Curry

This legislation could be more accurately described as the “Health and Social Services De-unionization Act.” Bill 29 attacks our members in community social services and health.

### **Community Social Services**

The Liberals say that this legislation will control the costs of providing social services. In practical terms, this legislation is meant to de-unionize the sector and create a low-wage ghetto. This will roll back wages and working conditions in the social services sector back more than a decade.

Bill 29 does this through three primary ways:

- **Ends successorship.**
- **Ends employment security.**
- **Ends obligation for new certifications to come under agreed-to-contract language.**

All three attacks were gains that we made as a result of the hard fought 11 week strike in 1999.

### **Successorship**

An accord was signed between the government and the four unions in social services at the end of the 11-week strike in 1999.

The accord guaranteed that if a contract is passed from one agency to another, the new agency will recognize the union and be bound by the collective agreement. The accord ensured continuity of services to clients, minimized the impact on individual employees and provided for an orderly transition from contractor to contractor.

Bill 29 tears up the Successorship Accord.

### **New certifications**

In the 1999 settlement, the employers’ association agreed that the terms of the new agreement would apply to new certifications. Now, Bill 29 says that employers are not required to abide by the 1999 settlement assuring collective agreements for new certifications.

### **Employment security**

A great victory of the 1999 strike was obtaining 12 months of employment security for laid-off employees. The agreement read, in part:

*“Displaced employees shall, following the expiration of their notice period under the collective agreement, retain employment security for a period of 12 months during which time*

*reasonable efforts will be made to place such employees into gainful employment.”*

Bill 29 simply says that employers are not required to carry out employment security provisions.

Instead, Bill 29 substitutes 60 days notice of layoff with meager severance pay (one week’s pay for every two years of service, to a maximum of 20 weeks.) Under this law you will have to work 40 years to get the maximum severance.

### **Parity Accord**

Following the 1999 dispute, the government signed an agreement that guaranteed:

*“Full parity of wages and benefits with community health by April 2004”. Bill 29 tears up the parity agreement. Bill 29 also permits the employers to opt out of the Health Benefit Trust.*

### **Health**

The Liberals attacked the members in health unions on several fronts by tearing up important collective agreement provisions and restricting health workers’ access to the *Labour Relations Code*.

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Bill 29 says that collective agreements must not contain provisions restricting the right of employers to contract out non-clinical services.

The current contract language prohibits contracting out that results in the laying off of employees. This is long-standing contract language that is a minimal standard in the public and private sector in BC. Bill 29 tears up this important right.

Now, when contracting out results in laid-off employees, there will no longer be employment security protection for these workers. Unions previously achieved employment security that allowed for 12 months work following the layoff notice. During that 12 month period the employers were obliged to make every effort to place displaced employees.

### **More problems with Bill 29**

Not only does Bill 29 do away with employment security, it also says:

*“A collective agreement must not contain a provision that restricts or limits a health care employer from laying off an employee and must not contain a provision that requires an employer to meet conditions before giving layoff notice other than 60 days notice.”*

Bill 29 also reduces bumping rights, it states:

*“A collective agreement must not contain a provision that provides an employee with bumping options set out in the regulations.”*

To date, only draft regulations are available. Under these draft regulations an employee has 48 hours to bump within a worksite and seven days to bump to a different worksite.

The draft regulations say that an employee with more than five years seniority can bump employees with less than five years if they are qualified and capable of performing the work. Under-five-year employees can bump the most junior employee whose hours are comparable if they are qualified and capable of performing the work.

If the bumping options are not exercised in the required time frame the employee may be laid off.

Currently, laid-off regulars can bump into a job in line with their seniority.

Bill 29 says that Section 38 will no longer apply to health sector employers.

However, the Liberals did not stop there. The *Labour Relations Code* at Section 35 says that if a part of a business is sold, leased or transferred then the collective agreement continues to apply to the new owner.

Bill 29 says that Section 35 will no longer apply to a health sector employer.

The *Labour Code* at Section 38 allows the Labour Relations Board to treat two employers as a common employer if the two employers are operating under common control and direction.

Bill 29 gives health care employers the right to transfer services and functions to other worksites and other employers. Employees can be temporarily assigned to other worksites and

employers provided the assignment is not longer than 30 days in a four-month period.

### **Fightback**

On the legal front, we are mounting a Charter of Rights challenge to the legislation. The legislation infringes our rights under the Charter to freedom of expression, freedom of association, security of the person and our equality rights.

A successful Charter challenge would result in a declaration that the legislation is invalid.

To obtain individual remedies for our members, we need to file individual grievances. For example, a laid off employee who is entitled to 12 months of employment security under the collective agreement but was laid off on 60 days notice, would file a grievance claiming a breach of the collective agreement. If our court action is successful and the legislation is struck down, then the grievance would proceed.

Individual grievances will allow us to keep track of the effect of the legislation and preserve claims for individual damages. However, it is crucial that a grievance contains all the relevant information when it is filed. The Charter challenge could take years to work through the Courts, and it will be impossible to try and gather information that long after the fact.

To ensure we have all the relevant facts, we have devised checklists to review when completing the grievance form.

**STEWARDS: Please use the attached Bill 29 fact sheet checklist (see next two pages.)**

# **Bill 29 fact sheet checklist**

## **Note to stewards:**

Bill 29 went into effect on January 28, 2002.

The union does not wish to have any *et al* grievances filed unless the grievance facts are identical for a group of members (i.e. 10 people laid off in the same facility on the same day because the employer contracted out their work).

In these cases a completed *et al* form (including individual member signatures) must be attached to the grievance form.

Please fill out this Bill 29 fact sheet checklist and attach it to each grievance form.

1) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Alternate contact number: \_\_\_\_\_

2) Date of Hire: \_\_\_\_\_

3) Component: \_\_\_\_\_

4) Name of employer: \_\_\_\_\_

5) Worksite/ Address: \_\_\_\_\_

6) Number of employees at worksite: \_\_\_\_\_

7) Clause of the collective agreement breached (i.e. employment security, layoff notice, contracting out, bumping): \_\_\_\_\_

8) Brief description of how the clause was breached:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

...more >

9) Witnesses (if any) include telephone numbers and alternate contact numbers:

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10) Remedy sought: \_\_\_\_\_

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11) Name of Shop Steward: \_\_\_\_\_

**Optional personal information:**

We need this information to support our court challenge to Bill 29 which claims that the Bill disproportionately impacts women and also particularly impacts recent immigrants, persons of colour, persons with low mobility, and possibly single parents.

12) Gender:     Female             Male

13) Immigration status (specify, if applicable, date of arrival in Canada as well as immigration status): \_\_\_\_\_

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14) Is the grievor the sole income earner for their family?     Yes     No  
If yes, specify family status (i.e. single parent): \_\_\_\_\_

15) Is the grievor a person of colour?                             Yes     No  
If yes, describe heritage, race or nationality: \_\_\_\_\_

16) Age: \_\_\_\_\_

17) Highest education level: \_\_\_\_\_



# Contracting in and out of public services

## *Protect jobs, follow the work*

The Liberals' recent slash-and-burn budget has cut deeply into a wide range of services critical to most British Columbians.

But our experience tells us many of these services will not disappear entirely.

In the 1980s, when the premier at the time, Bill Bennett, brought in his restraint budget - public sector workers learned that for practical reasons it is impossible for the government to eliminate all of the programs it wants to eliminate.

While large numbers of public sector workers were laid off, much of the work they had been performing was contracted in or out.

We also learned that there are ways to stop work from being lost. Grievances may be initiated or applications made to the Labour Relations Board when our work is contracted in or out.

A violation of the contracting out language occurs when bargaining unit work is given to a company or individuals who work outside of government which results in

the layoff of BCGEU members who previously performed this work.

"Contracting in" occurs when a person works alongside public sector employees in the same office but is employed on a personal service contract or through an employment agency or other company.

Contracting in and out allows public sector employers to say they have cut the numbers of public sector workers while at the same time continuing to provide the service in whole or in part.

If we are to be successful in re-claiming work previously performed by our members, it is crucial that we are able to follow the work of our members when it is contracted in or out.

### **Take action**

If you know of work that has been contracted in or out, you should file a grievance. These should be filed as individual grievances, although an "et al"

grievance is appropriate if the grievors are the contract employees. Grievances can be filed by the steward or by any member.

The Korbin Commission in the early '90s declared approximately 1,000 contractors to be government employees based on the following test. Answers to these questions are crucial for us to pursue a grievance for contracting in or out for a section 139 application at the Labour Relations Board. It is important that you attach a completed checklist to the BCGEU's copy when you submit the grievance to the Area Office.

**STEWARDS: Please see the checklist on next page.**



## **Bill 28 – the legislation no one wanted**

The Public Education Flexibility and Choice Act (Bill 28) gives B.C. colleges and institutions the ability to establish class size limits, determine hours of operation and the number and duration of semesters – all without regard to the collective agreement.

No one from the college community asked for or had input into the Act. Not the Post Secondary Employers' Association (PSEA), college boards, presidents or any of the unions involved.

The BCGEU has joined with the College Institute Educators Association (CIEA) in filing a Charter of Rights challenge in an attempt to have this law struck down.

## *Protect jobs, follow the work*

### *Steward's checklist - identify work that has gone*

1. What are the services, programs or duties that are no longer being done by BCGEU members?
2. When did the government cease providing the service?
3. How were these services performed prior to being cut?
4. Provide the name of any complete program or branch that was eliminated.
5. Where and how are those services or duties being performed now?
6. If services are being provided by a specific private company provide:
  - a) any details on the company itself,
  - b) any information you have on the contracts between government and the company
7. Do the people now providing the service under contract:
  - a) Attend ministry functions; ie., staff meetings, committees, advisory groups
  - b) Have a government/ministry business card?
  - c) Show as listed in the government/ministry telephone directory?
  - d) Work the same hours and days as regular government employees?
  - e) Report to government employees for assignment of work?
  - f) Have work stations located in government offices?
  - g) Have equipment or tools provided to them by government, eg., computers, phones?

## **The STEWARD**

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# Mandatory retirement rulings

On October 5, 2001 the B.C. Court of Appeal rendered a decision in *Greater Vancouver Regional District* that affects the right of some employers to force employees to retire at age 65.

## **Who does it apply to?**

The Court decision was decided on the basis of the *Charter of Rights*.

The *Charter* does not apply to all employers, but does apply to legislative, executive and administrative arms of government. The *Charter* applies to BCGEU Components 1, 2, 5, 6, 12 and 20.

The courts have said that an activity can be subject to *Charter* review even if the act was not performed by government but was subject to such significant governmental control that it may be effectively considered an act of government for *Charter* purposes.

The *Charter* does not apply to most of Component 10 and Component 17 as they are generally non-governmental contracts, except with municipalities which are government entities.

## **Application of Charter to Community Health and Social Services**

The Supreme Court of Canada considered a mandatory retirement policy of Vancouver General Hospital. The court held that while hospitals are government-funded, the responsibility for routine matters lay with the hospital board and thus the *Charter* did not apply. Therefore it is likely that mandatory retirement policies in community health and social services are not subject to *Charter* review.

## **Application of Charter to Education**

The courts have discussed the application of the *Charter* to the University of British Columbia and Douglas College.

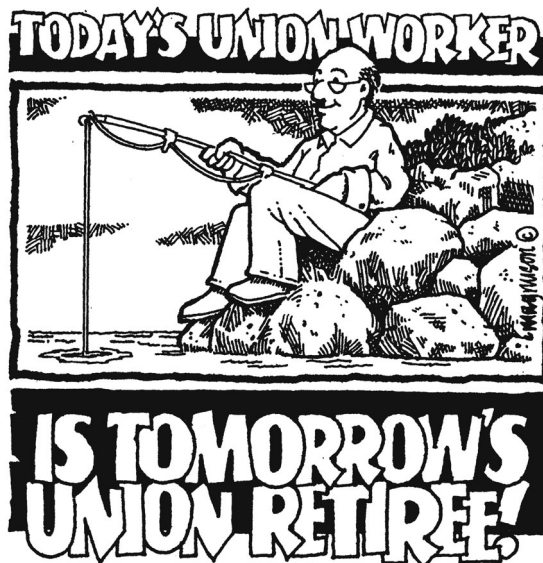
The *Charter* does not apply to UBC for the following reasons:

- No government control over core functions.
- The university functions as an autonomous body.
- 7 of 15 board members are not government-appointed.

However, the *Charter* was found to apply to Douglas College for these reasons:

- The college was created by the *College and Institute Act*.
- The college board is appointed by cabinet.
- The government may direct the operation of the Board.
- The court said that Douglas College is a crown agency established by government to implement government policy. The college performs acts of government while carrying out its functions.

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## **A case-by-case determination of the legality of mandatory retirement**

The courts have consistently held that mandatory retirement clearly breaches the equality rights section of the *Charter*, section 15.

However, section 1 of the *Charter* permits breaches of the *Charter* if it is a “reasonable limitation in a free and democratic society.” The onus is on the employer to justify its mandatory retirement policy.

Each employer’s mandatory retirement policy must be individually reviewed to determine if section 1 permits the mandatory retirement policy to stand. It may be that the employer’s onus is readily met in some cases because of similarities between already decided cases.

### ***The four-part test to Charter section 1***

- 1) What is the objective of the mandatory retirement policy?
- 2) Is there a rational connection between the policy and the objective?
- 3) Is there a minimal impairment of the *Charter* right?
- 4) Do the deleterious effects of the policy outweigh the pressing and substantial objectives of the policy?

### ***Example of application of four-part test to mandatory retirement at a university***

#### **1) Objectives of the policy:**

...the objectives of the university’s mandatory retirement measures were: “(1) to enhance and maintain their capacity to seek and maintain excellence [in higher education] by permitting flexibility in resource allocation and faculty renewal; and (2) to preserve academic freedom and the collegial form of association by minimizing distinctive modes of performance evaluation.

#### **2) Rational connection:**

...mandatory retirement supports the tenure system which is crucial to academic freedom, and it facilitates renewal in a “closed system with limited resources”. It was thus rationally connected with the objectives of excellence and academic freedom.

#### **3) Minimal impairment:**

Faculty renewal is required if universities are to stay on the cutting edge of research and knowledge.

The detriment to those affected must be weighed against the benefit of the universities’ policies to society generally and the individuals who compose it.

#### **4) Balancing effects and objectives:**

Same discussion as for minimal impairment.

### ***What to do if you have a mandatory retirement grievance***

You need to investigate whether the *Charter* applies. If the employer is non-governmental then that is the end of the inquiry.

If the *Charter* applies, you should attempt to get an explanation from the employer of the objective of their policy. If they can provide no objective or if the objective is not rationally connected to the policy, then you can grieve it. The grievance should be framed as a breach of section 15 of the *Charter*.

*NOTE: This law may change if the Supreme Court of Canada hears the appeal. In the meantime, the latest judgment from the Court of Appeal is the law.*

# **“Building a Strong Work Environment in B.C.’s Public Service: A Key to Delivering Quality Service”**

An analysis of the Auditor General’s report  
by Mike Eso

In April 2002, B.C.’s Auditor General released a report which is a scathing indictment of the current work environment in the provincial public service.

The report confirms what the BCGEU, government clients and many community partners have been saying for some time – the public service work environment is atrocious, Campbell’s Liberal government cuts are making it worse, and service to the public is suffering as a result.

As Auditor General Wayne Strelioff notes, “Research has shown that citizens expect to receive at least the same quality of service as they do from private sector companies, despite the fact that they recognize government services are often more complex and difficult to deliver. As taxpayers, they also want these services to be delivered efficiently and economically.”

Here are some of the Auditor General’s comments on the state of the public service workplace in B.C.:

“Significant changes to improve the work environment are needed... An unhealthy work environment in the British Columbia public service is putting the delivery of quality service and the achievement of government’s objectives at risk.

“Stronger leadership is required to ensure the delivery

of high quality service to British Columbians. I was disappointed to discover that employees in the British Columbia public service do not trust or have confidence in their leaders. This issue permeated all of our findings and stood out overwhelmingly.

“I was particularly concerned to find that employees under age 30 are the least satisfied with their work. This poses a challenge for government, which will need to replace much of its current aging workforce in the next 10 years.

“Changes to organizational culture are required to ensure better service. We found that employees within the British Columbia public service want to serve their clients, but they lack the support they need to do this efficiently and effectively.

“Most ministries do not monitor client satisfaction or the quality or sustainability of their work environments, and virtually no ministries understand the linkages between their work environments and the quality of service they provide their clients.”

## **Government reaction... duck and dodge**

The Public Service Employee Relations Commission (PSERC) has yet to take adequate responsibility for addressing the report’s conclusions. PSERC cites the *Public Service Renewal Project* as evidence of its action to date. (The BCGEU previously commented on phase 1 of this project.)

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*“I surrounded myself with the best people,  
but none of them could stand working for me.”*



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PSERC's response focuses on consultation with "human resource management community and senior ministry managers." Consultation with frontline workers on their unions is not mentioned.

The commission also states: "PSERC agrees that individuals must be provided with opportunities to develop. However, they must also take personal responsibility for taking ownership of their own career development... it is clear there will be a number of outstanding career opportunities for aspiring public servants... with the Province of B.C."

It's hard to see where these "outstanding career opportunities" will come from in view of cuts of up to 60 per cent in some ministries.

The Auditor General concludes his report by saying, "I recognize that since our survey was administered a little over a year ago, the core review process is well underway and

most ministries are faced with large budget cutbacks. As a result, the work environment as reported here may well have changed. In light of the severe staffing cuts expected to be realized over the next few years and the impact these will have on staff morale, service levels and the government's ability to attract new employees in the future, I believe that the government cannot afford to ignore the issues presented here. They are, perhaps, more relevant than ever."

**Some of Auditor General's recommendations:**

1. We recommend that the British Columbia government develop and implement a strategy for managing its human resources to ensure the effective delivery of services into the future. This strategy should come after government has established its goals and objectives and determined what core functions and processes are critical to achieving them.

2. We recommend that the British Columbia government develop a comprehensive transition plan for implementing the significant changes that have arisen as a result of budget cutbacks and refocusing on core services. The way in which the current downsizing is handled will have a significant impact on the reputation of the public service as an employer, not only affecting its ability to recruit in the future, but also its ability to retain the valued employees who are left.

3. We recommend that the Public Service Employee Relations Commission measure government-wide performance on the work environment on a consistent, regular basis and report on it as an important element of organizational capacity through annual service reports to the Legislative Assembly. Ministries should similarly monitor and report on their work environments.

4. We recommend that the Public Service Employee Relations Commission and the ministries establish service standards, measure their performance against these standards and report through to the Legislative Assembly.



**What BCGEU stewards and members can do:**

Share these findings with co-workers and members of your community. Continue to press the Liberals for appropriate consultation and input from frontline workers and the BCGEU.