

COALITION OF BC BUSINESSES

SPECIAL TO THE VANCOUVER SUN – November 27, 2006

Labour strike is an economic weapon, not a political protest

By Kevin Evans
Chair, Coalition of BC Businesses

The BC Supreme Court is expected to rule in December whether political strikes launched by the Health Employees Union and the BC Teachers Federation should be protected by Canada's *Charter of Rights and Freedoms*.

At issue are the unions' illegal walkouts in 2002 and 2003 (the so-called "Days of Protest") and an order from the Labour Relations Board that union members return to work.

The unions claim they were engaged, not in a strike, but in a political protest that should be protected by Canada's *Charter of Rights and Freedoms* as a freedom of expression.

The effect of a Court decision favouring the unions could well embolden other unionized employees to walk off the job to protest any number of political causes.

The unions' attempt to use the Courts to permit mid-contract strikes is a back-door strategy to dilute the government's ability to regulate labour relations in the province and to protect the delivery of essential services to BC residents.

The Supreme Court should dismiss the case on the grounds that coordinated withdrawals of service by employees (i.e. political protest strikes) are not protected by the *Charter*.

Rather, strikes are an economic weapon defined by the *Labour Relations Code*. They are permissible after a collective agreement has expired and the union and the employer have reached an impasse in bargaining for a new agreement.

If political strikes are found to be protected by the *Charter*, all of the limitations on strike action in the *Labour Relations Code* would be subject to challenge. The government would likely have to prove that any legislative action to end a strike, such as cooling-off periods or back-to-work laws, is a reasonable limit to freedom of expression. The process would be onerous and time-consuming.

British Columbians, who are dependent on essential services and on the delivery of services by business, would be hostage to political protest strikes used to advance and reinforce a union's political agenda or disagreements with Government policy.

The damage would be particularly acute for small and medium-sized businesses that have neither the resources nor the flexibility to carry on business during a political strike by a union.

Prevented by the *Labour Relations Code* from hiring replacement workers, an employer could do nothing but stand idly by as business withers in the face of a political protest strike.

The economic impact could be severe. Labour instability would put a chill on business investment and job creation.

Contrary to the union's plea, the prohibition on strike activity in the *Labour Relations Code* does not infringe on strikers' *Charter* rights because the prohibition does not affect their ability to express political opinions. It only restricts the manner or method of the expression, without regard to its content.

The *Labour Relations Code* does not prohibit people from voicing, venting, discussing or publishing their political views, or participating in protest rallies. Nor does it prohibit them from expressing their views at the ballot box.

The purpose of the prohibition on political or other strikes under the *Code* (other than at certain times in the collective bargaining process) is to prevent unions from inflicting economic or social services-related pain on employers and the public.

In a political strike, the message to the employer is if union demands are not met, the union will inflict economic and social pain on employers and taxpayers. Victimization of employers and the public, who are powerless to prevent a political strike, is not the kind of expression that the *Charter* should protect.

Others in our society do not receive protection under the *Charter* for methods of "expression" that cause harm to others – why should unions be any different?

Finally, there is no way to distinguish between a strike carried out for political purposes and a strike undertaken for collective bargaining purposes. Both involve the same conduct (a withdrawal of services) and both have the same detrimental effects on employers and the public.

This can be seen from the conduct of the HEU after the Government legislated striking hospital workers back to work in the spring of 2005. Prior to the back-to-work legislation, the purpose of the HEU strike was to improve its collective bargaining position. However, once the government legislated the unionized employees back to work, the HEU announced that the strike was now a "political protest," and therefore immune from the back-to-work legislation and *Labour Relations Board* orders.

The harm to the public and to the social and economic fabric of the province from strike activity is the same whether that activity is engaged in collective bargaining or political protest.

The HEU and the BCTF should find a more constructive way to work with the BC government to sort out policy issues and collective bargaining disputes than to seek legal outcomes that would seriously jeopardize today's climate of labour stability and cast labour-management relations into head-to-head conflict.

The Coalition of BC Businesses represents small and medium-sized businesses in the development of labour and employment policies that foster a positive relationship between BC employers and employees.