



July 2017

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## Charter Challenge Update

### Decision

In the spring of 2016, Judge Lederer of the Ontario Superior Court of Justice ruled that Bill 115, the *Putting Students First Act*, was unconstitutional.

He agreed with CUPE and the other unions involved in the Charter challenge that the Act interfered in our right to freedom of association under the Canadian Charter of Rights and Freedoms. In summary, it interfered in our right to freely negotiate our collective agreements and our right to strike.

### Remedy for Violation of Charter Rights

CUPE and the Crown entered into settlement discussions to determine an appropriate remedy. As all members had their rights violated during that time, we agreed all members were entitled to damages. The overall general damages award to CUPE for its members was \$56.7 million.

The payout applies to all those covered by a CUPE school board collective agreement between September 1<sup>st</sup>, 2012 and August 31<sup>st</sup>, 2014. Those who were covered under a CUPE agreement in only one of the two years shall receive half the per person payment. The payment is estimated to be \$905.50 if one worked in both years and \$452.75 for one year.

### Remedy Settlement Vote Results: 93.4% vote yes!

Locals across the province held votes on the settlement, with the last vote being held on July 4th, 2017. The votes were then counted and resulted in 93.4% of the votes indicating support for the settlement.

## Payment of Settlement

One issue of dispute between CUPE and the Crown was left to be decided by an arbitrator. This issue was whether the monies would be paid out through a third-party administrator similar to a class action law suit (CUPE's position) or through the school boards (Crown's position).

This issue was heard by Arbitrator Mitchnick on July 6<sup>th</sup>. His decision was issued on July 12<sup>th</sup>. His decision, while clearly indicating his view that this was a damage award and therefore not subject to taxes, did not support CUPE's position, which was that the distribution of the cheques would most efficiently be handled through a third party. He decided school boards will be responsible for distributing the funds.

He went on to say, "...at the end of the day it will be for the Province, whatever it has to do to make it happen, to satisfy the Arbitrator that pay-outs have been made to all affected employees in accordance with the terms of the Memorandum of Settlement." So in essence, if a school board does not pay this out as damages, it is up to the Crown to ensure the intention of the parties to the Settlement is respected and members receive their full remedy entitlement.

### Next Steps: Identifying those entitled to damages

We met with representatives of the Ministry on **Friday, July 14<sup>th</sup>**, to discuss the collection of data that would be required for a due diligence review by CUPE. It is imperative that all entitled to the remedy be identified and that those who were working for more than one board during the period in question receive only one general damages payment.

The Crown will collect from school boards the necessary data for employees who were covered by a CUPE collective agreement in each of the two years from September 1st, 2012 to August 31<sup>st</sup>, 2013 and from September 1<sup>st</sup>, 2013 to August 31<sup>st</sup>, 2014.

This data will be shared with CUPE no later than **August 31<sup>st</sup>, 2017**. CUPE will complete its due diligence report no later than **September 30<sup>th</sup>, 2017**.

Disputes as to the entitlement of various individuals must be referred to Arbitrator Mitchnick by **October 31<sup>st</sup>, 2017**.

These are tight timelines but are there to ensure payment to all those entitled as soon possible. Our goal remains payment by **December 2017** or **January 2018**.

### What can you do to facilitate the process?

As a member, you should ensure that the employer and your local have an accurate mailing address and contact information for you.

If you know people who would be entitled to a payment but who have retired during or since the two years in question, ensure they know to update their contact information with the local and the employer.