

# SUPREME COURT SAYS WE WIN!

## Charter applies: labour rights are human rights

OTTAWA, JUNE 8, 2007

The Supreme Court says we got it right 20 years ago: labour rights are protected by our Charter of Rights and Freedoms.

The court reversed 20 years of its own jurisprudence on June 8, 2007 by ruling that the guarantee of freedom of association in section 2(d) of the Charter of Rights protects the right of Canadian workers to bargain collectively.

The judgment is considered the most significant court decision in support of labour rights in the past 20 years. It breathes new life into section 2(d) of the Charter by explicitly repudiating the court's restrictive rulings taken in the 1980s. Those rulings had limited Charter protections to the right to join a union—but not to engage in union activities.

Supreme Court Chief Justice Beverley McLachlin and Justice Louis LeBel, the authors of the decision, forcefully declared:

“We conclude that Section 2(d) of the Charter protects the capacity of members of labour unions to engage, in association, in collective bargaining on fundamental workplace issues.”

The 6-1 ruling related to B.C.'s Health and Social Services Delivery Improvement Act (Bill 29) enacted by the Liberal government of Premier Gordon Campbell in 2002. The legislation cancelled collective agreement protections for health care workers in areas such as contracting out, and layoff and bumping rights.

The Supreme Court decision cited four propositions:

1) A review of the section 2(d) jurisprudence of the Supreme Court reveals that the reasons evoked in the past for holding that the guarantee of freedom of association does not extend to collective bargaining can no longer stand up to public scrutiny.

2) An interpretation of section 2(d) that precludes collective bargaining from its ambit is inconsistent with Canada's historic recognition of the importance of collective bargaining to freedom of association.

3) Collective bargaining is an integral component of freedom of association in international law, which may inform the interpretation of Charter guarantees.

4) Interpreting section 2(d) as including a right to collective bargaining is consistent with, and indeed, promotes other Charter rights, freedoms and values.



This ruling affirms that labour rights are human rights and that they are an integral part of any democratic society. All governments in Canada should re-assess the cavalier manner in which they have violated international conventions and standards and at long last abide by them.

James Clancy

# Ruling reflects labour rights campaign themes

**Arguments made by the Supreme Court justices are consistent with, and closely mirror, the key themes of our ongoing National Union national campaign *Labour Rights Are Human Rights***

## NUPGE campaign

The right to freedom of association, which includes the right of workers to join a union and bargain collectively, is a fundamental and universal human right and a cornerstone of democracy.

## Supreme Court ruling

“Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms the values of dignity, personal autonomy, equality and democracy.”

## NUPGE campaign

The fight to achieve collective bargaining rights dates back to the earliest stages of industrial development in Canada.

## Supreme Court ruling

“The history of collective bargaining in Canada reveals that long before the present statutory labour regimes were in place, collective bargaining was recognized as a fundamental aspect of Canadian society.”

## NUPGE campaign

Canada has played an important role in drafting international Conventions and Declarations on labour rights and, as a signatory to these important documents, Canada has agreed to respect and promote freedom of association and the effective right to collective bargaining.

## Supreme Court ruling

“International Conventions to which Canada is a party recognize the right of members of unions to engage in collective bargaining, as part of the protection for freedom of association. It is reasonable to infer that the Charter should be interpreted as recognizing at least the same level of protection”.

## NUPGE campaign

Collective bargaining promotes higher levels of equality within the Canadian labour market and our economy.

## Supreme Court ruling

“Collective bargaining also enhances the Charter value of equality.”

## NUPGE campaign

The failure to protect freedom of association and collective bargaining in Canadian workplaces diminishes our standing as a democracy.

## Supreme Court ruling

“A constitutional right to collective bargaining is supported by the Charter value of enhancing democracy.”

# Labour Rights

Free collective bargaining  
is a human right.

It is under attack.

Our objective is to  
expose that reality and  
restore that right.

[www.labourrights.ca](http://www.labourrights.ca)

## Protecting and promoting labour rights the National Union way

**1982** Our National Union was the first union in 1982 to sound the alarm that the Charter of Rights and Freedoms might not adequately protect the right to freedom of association for Canadian workers.

**1985** The National Union was successful at having the first-ever Study Mission from the International Labour Organization (ILO) come to Canada to investigate National Union complaints against various pieces of provincial legislation which violated international labour relations standards by unduly restricting the bargaining rights of government employees.

**1986** The National Union published *The Canadian Charter of Rights and Freedoms: A Double-Edged Sword for Unions?*

**1991** The National Union won an important victory in the Supreme Court of Canada (the Lavigne decision) upholding the importance, value and legitimacy of the social and political role of unions in Canada.

Throughout the 1990s and up to present, the National Union has filed a total of 16 complaints with the International Labour Organization (ILO) against provincial labour legislation that violates the ILO's freedom of association principles. The National Union has filed more complaints – 25 in total – with the ILO than any other union in North America.

**2000** Since 2000, the National Union has lobbied the Canadian government to ratify the three remaining core ILO Conventions and actively work with provincial and territorial governments to improve Canada's record at the ILO.

**2004** Delegates to the National Union's 2004 Convention adopted a major policy paper entitled *Freedom of Association: Reversing the Legislative Attack on the Collective Bargaining Rights of Canadian Workers*.

In 2004, the National Union signed two protocols with UFCW Canada in which we commit to support UFCW Canada's efforts to organize Wal-Mart workers as well as their continuing efforts to achieve representation rights for agricultural workers.

**2005** The National Union, along with the UFCW Canada, published a national study entitled *Collective Bargaining in Canada: Human Right or Canadian Illusion?* A second edition was published in 2006.

The National Union developed a website ([www.labourrights.ca](http://www.labourrights.ca)) in support of its campaign.

At the 2005 Canadian Labour Congress convention, the National Union pushed the CLC and its affiliates to make progressive labour law reform a central part of the national political agenda.

**2006** The National Union signed a Mutual Aid and Assistance Pact with the Canadian Police Association, the Canadian Teachers' Federation and UFCW Canada to promote collective bargaining in Canada and to influence the federal and provincial governments to honour International Labour Organization (ILO) Conventions and principles.

The National Union developed a *Labour Rights Are Human Rights* e-bulletin in support of its campaign.

The National Union developed and promoted a *Canadian Workers' Bill of Rights* which affirms that all workers have the right to join a union and engage in collective bargaining.

**2007** The National Union proposes to delegates to the 2007 Convention a plan to build upon and enhance its *Labour Rights Are Human Rights* campaign here in Canada and internationally.

