

ETFO, other unions win major Charter challenge victory, Bill 124 declared unconstitutional

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TORONTO, ON – The Elementary Teachers' Federation of Ontario (ETFO) and other unions have won a major court victory at the Ontario Superior Court of Justice. The Court found that the Ontario government's decision, under Bill 124, to impose a three-year wage freeze for ETFO members and other public service workers was unconstitutional and violated workers' collective bargaining rights. The decision does not address a remedy for this Charter violation.

"Given the content and timing of the legislation in 2019—in the midst of negotiations for the renewal of collective agreements in the education sector—Bill 124 was a direct attack on teachers and education workers," says ETFO President Karen Brown. "Today's decision reinforces what we have known all along: Bill 124 violates the democratic rights of all workers in Ontario's public sector and is a clear violation of ETFO members' freedom of association as guaranteed by the *Canadian Charter of Rights and Freedoms*."

Bill 124 unilaterally imposed a one per cent cap on annual compensation increases in the public sector for a period of three years. For the education sector, this three-year period started in 2019.

In his ruling, Justice Markus Koehnen ruled that the passage of Bill 124 infringed upon union members' right to freedom of association under the *Charter*. He stated that, "(t)he *Charter* protects not just the right to associate, but also the right to a meaningful process in which unions can put on the table those issues that are of concern to workers and have them discussed in good faith. Legislation that takes issues off the table interferes with collective bargaining."

Justice Koehnen also noted in his decision that the Ontario government was imposing a limit of one per cent on wage increases because it feared that taking that position at the bargaining table would lead union members to exercise their constitutionally protected right to strike. He noted that, "Although inconvenient, the right to strike is a component of a free and democratic society."

"ETFO will continue to stand against the Ford government's flagrant abuse of power to override the rights of the people of Ontario, and will do everything it can to protect its members from unconstitutional interference," adds Brown. "Instead of forcing restrictions on collective bargaining that are unconstitutional, the Ford government should be focused on reaching agreements at the bargaining table, in good faith. It's time for the government to respect teachers, occasional teachers, early childhood educators, education and professional support personnel, and all public service workers."

ETFO continues to engage in the central bargaining process with the government, the Ontario Public School Boards' Association, and the Council of Trustees' Associations. The Federation continues to demand that fair collective agreements must be reached at the bargaining table and not through legislation.

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Background

In June 2019, the Ontario government introduced legislation called the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, also known as Bill 124. The Act limited wage increases for approximately 780,000 public sector workers in the province of Ontario to one per cent per year for a three-year period. For teachers and education workers, the three-year period started in September 2019.

In November 2019, ETFO, the Association des enseignantes et des enseignants franco-ontariens, the Ontario English Catholic Teachers' Association, and the Ontario Secondary School Teachers' Federation and other public sector unions launched a court challenge against Bill 124.

In a landmark decision released today, November 29, 2022, Superior Court of Justice Markus Koehnen found Bill 124 "to be contrary to section 2(d) of the *Charter*, and not justified under section 1 of the *Charter*."

[ETFO](#) represents approximately 83,000 members, including public elementary teachers, occasional teachers, designated early childhood educators, education support personnel, and professional support personnel. Visit [BuildingBetterSchools.ca](https://www.buildingbetterschools.ca).

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