



BILL 115 REMEDY FREQUENTLY ASKED QUESTIONS (FAQs)

JUNE 15, 2017

What does ETFO mean when it talks about a Bill 115 “remedy”?

Remedy is the means by which the violation of a right is prevented, redressed, or compensated by a court or through some other legal process (e.g., an arbitration hearing, a tribunal, etc.).

Why did ETFO file a *Charter* Challenge against the Ontario government?

In September 2012, Ontario’s government passed unprecedented legislation called the *Putting Students First Act* (also referred to as Bill 115). Bill 115 imposed collective agreement strips on some education sector union members, including on ETFO members.

ETFO and four other unions (OSSTF, CUPE, OPSEU, Unifor) challenged Bill 115 at the Ontario Superior Court of Justice. They argued that Bill 115 interfered with collective bargaining between unions and school boards and, as a result, violated the *Canadian Charter of Rights and Freedoms*.

What did the Court decide?

In a landmark decision released on April 20, 2016, Justice Thomas Lederer of the Ontario Superior Court of Justice agreed with ETFO and the other unions. Justice Lederer determined that Bill 115 substantially interfered with the unions’ collective bargaining rights contrary to Section 2(d) of the *Charter*. Justice Lederer wrote that the Ontario government’s process for collective bargaining was fundamentally flawed:

In its desire to reach an end it had defined, Ontario over ran the rights of the employees....The impact was not just on the economic circumstances of education workers but on their associational rights and the dignity, autonomy and equality that comes with the exercise of that fundamental freedom.

Justice Lederer’s decision is located on ETFO’s website at:

<http://www.etfo.ca/defendingworkingconditions/bargainingandagreements/pages/charterchallenge.aspx>

Did the Court’s decision include a remedy for the losses ETFO and other union members experienced as a result of the imposition of Bill 115?

No, the Court’s decision did not set out a remedy. Justice Lederer left it to the parties to determine a fair remedy. It was understood that if the unions and the government could not agree on a remedy, then the matter would be referred back to the Court.

Did the Court’s decision in April 2016 obligate ETFO to take the offer that other unions accepted?

No, each individual union has the ability to reach its own agreement with the government about what it feels is an acceptable remedy for the losses incurred by their members as the result of the imposition of Bill 115.

Has ETFO tried to work with the government to determine a fair Bill 115 remedy?

Yes, ETFO met with government representatives in an attempt to negotiate a fair Bill 115 remedy settlement between September 2016 and June 2017.

Did ETFO consult with local presidents about the Bill 115 remedy?

ETFO determined its position regarding a fair Bill 115 remedy following input from local presidents and chief negotiators at a special meeting on September 20, 2017. ETFO met with local presidents and chief negotiators on several separate occasions this year to further explore this issue. ETFO's latest special meeting with local presidents and chief negotiators about Bill 115 remedy discussions took place on May 4, 2017.

What did the government offer in its remedy? What was ETFO seeking with respect to a fair Bill 115 remedy?

A letter will be sent to members' homes with more information about Bill 115 remedy discussions. That letter will include information about the government's offer and ETFO's position with respect to a fair Bill 115 remedy.

Why did ETFO's Provincial Executive decide to move forward and make submissions about a fair Bill 115 remedy to the Court?

When Bill 115 was passed on September 11, 2012, ETFO members didn't just have their collective agreements stripped; their rights under the *Canadian Charter of Rights and Freedoms* were also violated by the Ontario government.

ETFO worked over the course of the past several months to obtain a remedy from the government that would address both the collective agreement strips and the *Charter* violation experienced by our members. The government was unwilling to provide a remedy that fairly addressed these issues.

Careful consideration was given to this decision. In the end, your Provincial Executive believes that the principal of fair restitution for the losses experienced by ETFO members as the result of Bill 115 needs to be honoured. What the government proposed as its offer doesn't address that principle.

Will ETFO be holding a member vote about the government's Bill 115 remedy offer?

Your Provincial Executive made a commitment that, if an acceptable Bill 115 remedy agreement was reached with the government, ETFO members would be able to vote on whether to accept that agreement. What the government is offering is not acceptable; there is no agreement, and so the issue of remedy is being referred back to the Court.

When will ETFO be making submissions to the Court?

It will be several weeks, or possibly even months, before ETFO's submission is heard by Justice Lederer at the Ontario Superior Court of Justice. ETFO will advise members as soon as Court dates have been arranged.

Does the Court have the ability to determine the content of a Bill 115 remedy?

Yes, the Court has the ability to issue a Bill 115 remedy that is greater, lesser or the same as the one offered to ETFO by the government.

Does ETFO have an idea of what the Court might decide regarding the Bill 115 remedy?

It is impossible to determine what the Court may decide with respect to the Bill 115 remedy.

What will be included in ETFO's submission to the Court?

The approach taken by ETFO in its submissions to the Court is a matter of legal strategy and not something that can be shared publicly until the Court hearing begins.