

Feds' wage restraint ruled constitutional in battle with Crown lawyers

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Prime Minister Stephen Harper's wage-restraint response to the global economic crisis was constitutional, Ontario's top court ruled Tuesday in a case that pitted the Conservative government [against its own lawyers](#).

The ruling is the first of several pending decisions to reach an Appeal Court arising out of the Expenditure Restraint Act enacted in March 2009 as the world economy collapsed.

Essentially, the restraint act rendered bargaining over wages largely moot by capping increases for about 400,000 federal workers at little more than nine per cent over five years, retroactive to 2006.

The union representing about 2,700 federal prosecutors and other government lawyers — the Association of Justice Counsel — argued the act robbed it of its constitutionally guaranteed right to bargain.

In siding with Ottawa, the Ontario Court of Appeal said the constitutional validity of the restraint act turned on whether the parties had the opportunity for a "meaningful process" of collective bargaining before it was enacted.

On that question, it found the association had in fact spent two years bargaining with the federal government before reaching an impasse and going to arbitration.

At that point, the association's charter rights had been satisfied, the court said.

"Further negotiation may be possible after the constitutionally protected phase of the process of bargaining has concluded, but that possibility — a remote one on the facts of this case — does not expand the scope of the protected right," the court ruled.

In a ruling last year, Ontario Superior Court Justice Duncan Grace largely backed the federal government.

While the act did infringe on charter rights, Grace said the infringement was justified because the government was faced with "virtually unprecedented" economic conditions and had reacted to avoid an "unimaginable financial catastrophe."

However, he found no such justification for the year 2006-2007, when Ottawa ran a record \$13.2-billion surplus.

“Courts must be vigilant to ensure that troubled times are not used, even if innocently, to discard constitutionally protected rights and freedoms,” Grace said.

Ottawa appealed the decision, arguing the act did not infringe on the charter in any way, while the association argued Grace did not go far enough.

The Appeal Court found no charter infringement.

The federal Crown lawyers had long complained they were earning far less — about \$106,000 a year on average — than either their provincial counterparts in Ontario or private-sector lawyers.

In late June, they reached a tentative agreement that will see pay boosted by 15.25 percentage points as of next May.