



# Unions file Charter challenge on government's right to determine sick leave deal

**Kathryn May, Ottawa Citizen, June 29, 2015**

Federal unions are challenging the constitutionality of the recently passed budget bill that allows the Conservative government to bypass collective bargaining and limit public servants' right to strikes so it can impose a new sick leave and disability regime.

The long-anticipated lawsuit was filed in Ontario Superior Court Monday by 12 of the 17 unions representing Canada's public servants, alleging the Conservatives' legislative changes violate employees' right to free and fair collective bargaining and limits the right to strike.

The lawsuit is aimed at the part of the budget bill in which the government gave itself the power to override the Public Service Labour Relations Act and impose a new sick-leave and disability regime for public servants at any time.

The legal action is led by the Professional Institute of the Public Service of Canada (PIPSC) and Canadian Association of Professional Employees (CAPE), the two largest unions for professional public servants, from scientists to economists. The giant Public Service Alliance of Canada is expected to file a separate challenge Tuesday.

Unions argued from the start that the changes are unconstitutional. PIPSC earlier asked Treasury Board negotiators for their word that these new powers wouldn't be used while the court is reviewing the constitutionality of the law or until a deal is reached at the bargaining table. Treasury Board has not yet replied.

"This government is giving itself the power to directly violate the constitutionally-protected right to meaningful collective bargaining," said PIPSC President Debi Daviau.

"They have left us no choice but to take legal action to defend these rights and we are asking that they commit not to use this power until a court has ruled on its constitutionality."

The lawsuit is the latest in a series of outstanding constitutional challenges the various unions have taken against legislation passed by the Conservative government.

A number of significant Supreme Court rulings have changed the landscape for labour rights in Canada. The high court has recognized the right to meaningful collective bargaining as part of the Charter of Rights protection of freedom of association.

In court documents, the unions argue the legislative changes “interfere” with meaningful collective bargaining by reducing the negotiating power of unions.

The Supreme Court also ruled that the right to strike is a corollary to meaningful collective bargaining. The threat or withdrawal of services to improve conditions of employment is an “indispensable” part of the collective bargaining process.

“(Bill C-59) ...fundamentally upset the balance of power in collective bargaining, reducing employees negotiating leverage and denying employees any control or influence over the bargaining process with respect to sick leave coverage, a vital and important collective bargaining right to employees and Treasury Board’s key concern for this round of bargaining.”

The unions also noted that the legislative changes contravene international labour law, which also recognizes collective bargaining as part of freedom of association.

The unions argue that sick leave is a “critically important” benefit that has been enshrined in employees’ contracts for 40 years. They claim the existing regime is the result of “numerous trade-offs” made at the bargaining table and salary protection in event of illness and disability is a key piece of public servants’ compensation packages.

With the changes, the government can eliminate sick leave altogether, including the 15 million days that public servants have saved in their sick leave banks.

Treasury Board can also dictate terms of the three most contentious issues around sick leave – the amount of annual sick leave public servants will be entitled to, the amount they can carry over to the next year and how the existing sick-leave banks will be handled.

The unions argue Treasury Board’s ‘unilateral power’ to impose a sick leave deal extends to creating a short-term disability plan and modifying the existing long-term disability plan. With this power, Treasury Board has effectively removed sick leave as an issue that public servants can strike over.

The government can also now override the “statutory freeze” provisions of the Public Service Labour Relations Act, which unions say undermines collective bargaining. This clause ensures expired contracts are frozen or remain in place until a new agreement is reached.

Arbitrators would also be bound by whatever sick leave terms the government wants when it is ruling on an impasse in bargaining. The changes also forbid any changes to sick leave for four years after the new short-term disability plan is implemented.

The budget bill immediately had a chilling impact on the ongoing round of bargaining but the two sides have so far continued to meet and scheduled bargaining sessions into July. Bargaining has historically slowed or stopped during the summer but Clement has publicly said he wants a sick leave deal before the election.

The timing for the government to initiate its new powers is wide open. That period begins when cabinet decides and sets the date, and ends when the new short-term disability plan comes into effect, which isn't expected before 2017.

Under the legislation, if sick leave is imposed, the government and unions can continue contract negotiations on any other outstanding issues. Unions can strike on any issue other than sick leave.

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## **Public service unions file charter challenge over sick leave changes**

**12 unions filed a challenge Monday, largest union plans to file its legal challenge Tuesday**

**CBC News, June 29, 2015**

Twelve federal public service unions have filed a legal challenge to the budget bill passed earlier this year — and the country's largest such union plans to file its own challenge Tuesday — arguing that the bill's plan to save \$900 million by overhauling sick leave and disability programs violates the country's Charter of Rights and Freedoms.

The budget bill was passed in April, and its proposed changes to federal civil servants' sick leave provisions are one of the most contentious issues in talks with public service unions.

Those talks were temporarily stalled in May when the Public Service Alliance of Canada walked away from bargaining meetings, but Bill C-59 would give the government the ability to act before the conclusion of that process, something unions argue contravenes the Public Service Labour Relations Act.

"In our view, the portion of this legislation dealing with sick leave bargaining is unconstitutional," said a media release issued Monday by the Professional Institute of the Public Service of Canada, one of the 12 unions that filed Monday's challenge.

"It fundamentally undermines the constitutionally protected process of collective bargaining and the right to strike."

The \$900 million in savings expected with the changes to sick leave was a major piece of Finance Minister Joe Oliver's framework for reaching a \$1.4-billion budget surplus for 2015-16.

The budget also said reducing long-term disability costs and other savings from unwinding the liability related to sick leave would result in savings of \$200 million in 2016-17 and 2017-18 and \$100 million in the following two years.

Canada's largest public sector union, the Public Service Alliance of Canada, confirmed Monday evening that it plans to file its challenge on Tuesday.

"The Supreme Court has confirmed that the right to collective bargaining is a protected right under the charter and we are defending that right through all legal means at our disposal," said Robyn Benson, PSAC's national president, in a media release.

**Read the full legal challenge filed Monday below:**

<http://s3.documentcloud.org/documents/2124273/bill-c-59-challenge-filed-by-12-federal-public.pdf>