

## **Feds, lawyers to square off over wage curbs**

*By Colin Perkel, The Canadian Press, June 12, 2012*

TORONTO – One of the pillars of Prime Minister Stephen Harper’s response to the global economic crisis takes centre stage Wednesday, as Ontario’s top court is asked to weigh in on a feud pitting the Conservative government against its own lawyers.

At issue before the Ontario Court of Appeal is the Expenditure Restraint Act, which the government enacted in March 2009 as the world economy collapsed.

Essentially, the act rendered collective 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 government can’t arbitrarily say it’s only paying half as much for paperclips because there’s a recession,” Andrew Lokan, lawyer for the Association of Justice Counsel, said Tuesday.

“To take aim at wages the way it does, they need to pass through a standard of justification.”

In their appeals, both sides are attacking a lower court ruling that upheld the act as a whole, but struck down provisions that made it retroactive to the 2006-2007 fiscal year.

In upholding the act last year, Ontario Superior Court Justice Duncan Grace agreed the federal government was faced with “virtually unprecedented” economic conditions and reacted to avoid an “unimaginable financial catastrophe.”

However, he found the government violated the lawyers’ Charter rights by including 2006-2007 without adequate explanation — a year in which the association says 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.

In its appeal, the Association of Justice Counsel — the union representing about 2,700 federal prosecutors and other government lawyers — argues Grace did not go far enough.

“Justice Grace erred in accepting the argument that the global financial crisis, however serious, justified the imposition of wage restraints,” the association says in its court filings.

“There was no obvious connection between the issues created by the global financial crisis and the claimed need to suspend the right to bargain collectively over wages.”

The association suggests the government was motivated more by political optics than fiscal imperatives.

Savings under the act — estimated at a maximum \$1 billion per year on an annual federal budget of \$268 billion — were “dwarfed” by tax cuts worth about \$21 billion, and government stimulus spending of about \$40 billion between 2009 and 2011, the lawyers say.

For its part, the government argues Grace failed to show appropriate deference to Parliament. Ottawa also maintains it had little choice but to impose the wage caps as part of its Economic Action Plan to combat the downturn.

“The credibility and maximum effectiveness of the Economic Action Plan rested on the government’s ability to demonstrate its commitment to sound, ongoing fiscal management and long-term sustainable public finances,” the government says in its factum.

The association, which became the lawyers’ union in 2006 and was trying to get a first contract, argues the act breached the Charter by preventing its members from addressing long-standing salary concerns through collective bargaining.

At the end of 2006, for example, federal Crown lawyers earned on average \$101,332 a year — about one-third less than their provincial counterparts in Ontario, and about half of what private-sector lawyers made.

In its first formal wage proposal in November 2006, the association sought increases of about 35 per cent over the life of the agreement. By the time the matter went to arbitration, the act had scuttled any hope of that kind of raise.

The association argues the act is unfair in that other public-sector employees — government executives included — who had already bargained increases were allowed to keep them, even if they exceeded its limits.

The court filings also reveal acrimony over government secrecy, with the association accusing the Treasury Board and Dept. of Justice of stonewalling requests for detailed payroll and related information.