

Treasury Board needs \$16M to create constitutional litigation unit

Public sector unions worry what action may signal

By Kathryn May, Ottawa Citizen March 8, 2012

Treasury Board says it needs \$16-million to set up a new litigation management unit to handle the growing number of constitutional challenges that unions and others have initiated against the federal government largely over collective bargaining rights.

But unions said the creation of new unit when massive cuts are looming in the federal budget sends a strong signal that the Conservative budget is going to take another shot at collective bargaining, forcing unions to launch another round of legal challenges.

"I think this hints at what's to come in the budget," said Ron Cochrane, co-chairman of the joint union and management National Joint Council.

"If this was an Easter egg hunt, they have left enough eggs around to tell you where they are going. They are going to do whatever they want, probably through an omnibus bill, and leave it to the unions to challenge it."

Marco Mendicino, president of the Association of Justice Counsel, which represents federal lawyers, said the government is clearly "digging in its heels" to take on federal unions and restrict collective bargaining.

Unions were stunned to learn of Treasury Board's plans for a new litigation unit, which was buried in the recently tabled Supplementary Estimates. The board has sought \$6.7 million in funding since November and wants another \$9.4 million for the year 2012/13, according to the Estimates.

Treasury Board officials said the unit is necessary to handle the 11 outstanding constitutional challenges launched between 2006 and 2011.

Nine of the lawsuits are challenging the constitutionality of the Conservatives' omnibus budget legislation in 2008. It included the Expenditure Restraint Act, which capped wages, imposed rollbacks on some workers and suspended collective bargaining until last March.

Two are aimed at overturning the Public Service Equitable Compensation Act, also buried in the omnibus bill, to overhaul pay equity. It took pay equity out of the Canadian

Human Rights Act for the broader public sector. Critics claim the legislation effectively kills workers' rights to equal pay for work of equal value.

The last two include the longstanding battle over whether RCMP have the right to form a union and engage in collective bargaining. The other is led by the Professional Institute of the Public Service of Canada and the Canadian Association of Professional Employers over the constitutionality of federal laws that forbid unions from bargaining pensions, staffing and job classifications for their members. Both unions say they are studying whether to continue with the lawsuit.

The way was paved for many of these challenges by a Supreme Court ruling that decided Canadians have a constitutional right to collective bargaining. In June 2007, the Supreme Court ruled a British Columbian labour law that allowed the government to effectively disregard union contracts and lay off workers was unconstitutional. The court decided the law was a "significant interference in the right to bargain collectively."

John Gordon, president of the Public Service Alliance of Canada, said the government has always had legal challenges from its unions and employees, but has never so publicly "manned up" with a separate unit and loaded it with money.

"Why are they doing that? They have never done it before and now they are putting it out front and centre that they're going to take us on. The signal is looking down to the budget they are going to nail us and know we'll take them to court," said Gordon.

Speculation has been rife since creation of the litigation unit came to light about what the Conservatives will do in the budget that would spark more legal challenges.

At the top of the list is severance pay. Many predict the government will use legislation to take away voluntary severance pay from all workers. The government struck a highly controversial deal with the largest union, Public Service Alliance of Canada, to surrender severance pay for voluntary departures such as retirements as part of a 5.3-percent wage deal. It promptly took it away from executives and all other non-unionized workers.

The government set aside \$1.9 billion to buy out the accumulated severance pay from existing workers and has so far used about \$1 billion.

Many of the 18 federal unions have since been locked in fruitless contract negotiations with Treasury Board, which has made severance pay a deal breaker. It's offering the same deal as the PSAC offer and if talks fail, the government has shown it wouldn't hesitate to impose a deal.

Some worry the government could impose a wage freeze or cap and suspend collective bargaining so they risk no labour disruption before going to an election in 2015. Others worry the government will suspend or tinker with provisions of the workforce adjustment agreement embedded in workers contracts that unions are relying on to help manage the downsizing with as few layoffs as possible.

"Our government plans to unveil a budget - that will continue to focus on the priorities of Canadians - a low tax plan for jobs and growth, not the self-interested calls from union bosses to continue to expand the size of the bureaucracy to meet the growing grasp of that bureaucracy," said Sean Osmar, press secretary for Treasury Board President Tony Clement in an email."

© Copyright (c) The Ottawa Citizen