



# Government must give five days' notice on sick leave deal, judge says

**Kathryn May, Ottawa Citizen, August 18, 2015**

An Ontario Superior Court judge ordered the Conservative government to give five days' notice if it plans to impose a new sick leave deal on Canada's public servants.

Justice Robert Beaudoin set Oct. 29 to hear a motion brought by federal unions for an injunction to stop the government from invoking new legislative powers that would allow it to force a deal.

The Conservatives' legislation leaves the timing for a deal wide open but Treasury Board President Tony Clement has said he wants a deal before the Oct. 19 election.

In his order, Beaudoin said if the government intends to go ahead, it should provide five working days' notice of its plans. The court will then decide whether the Oct. 29 hearing should be rescheduled.

Thirteen of the 17 federal unions recently filed a motion seeking an injunction to stop the government from invoking the new powers it gave itself in C-59, the budget omnibus bill, to unilaterally impose a new sick-leave deal.

Sick leave is the big issue at the ongoing round of collective bargaining. The Conservatives want to scrap the existing sick leave regime and replace it with a new short-term disability plan.

The government proposes reducing the number of annual sick days a year from 15 to six and abolish much of the 15 million days of banked unused sick leave.

Robyn Benson, president of the Public Service Alliance of Canada, said the unions would press to move the hearing to an earlier date if the government decided to force a deal before the hearing.

"We're pleased that the court is moving as quickly as possible to hear our injunction motion," Benson said in an email. "We're also pleased to see the court direct the government to provide advance notice if they intend to proceed with changes to current sick leave provisions before our motion is heard. This will give the court the opportunity to move up the hearing date if necessary."

The parties met with the judge Monday to set a schedule for the case. The government is expected to file its response and affidavits by Sept. 17. The cross-examinations of those who swore affidavits must be completed by Oct. 1.

The unions' written arguments are due Oct. 9 and those of the government by Oct. 19 — election day. Any replies from the parties to those submissions must be submitted by Oct. 26.

The unions have already filed constitutional challenges against C-59, the budget bill that allows the Conservatives to override the Public Service Labour Relations Act and impose a new deal whenever it wants. They argue the changes violate the right to free and collective bargaining as guaranteed by the Charter of Rights and Freedoms.

That challenge will take years to wind through the courts, forcing the unions to seek an injunction to put the government's legislative changes on hold until the court rules on the constitutionality of the law.

In the meantime, the unions want an injunction to stop the government from imposing a deal during the election period so bargaining can continue until the two sides reach an agreement.

In the notice of motion, unions argue an injunction is necessary because of the "serious" constitutional issues raised by the Conservatives' new legislative powers and the "irreparable harm" a new deal would cause unions and the employees they represent.

Some argue the government would violate the "caretaker convention" that kicked in when the election is called. Under the convention, the government should restrict itself to matters that are routine, non-controversial, urgent, reversible by a new government without cost or disruption or agreed to by the opposition parties.