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Lawyers win round in pay battle

CRISTIN SCHMITZ OTTAWA

The federal government's 2,700 unionized lawyers and prosecutors are "very much encouraged" by a judge's decision to strike down the 2.5-per-cent wage cap retroactively imposed on them for 2006-2007, says the president of the Association of Justice Counsel (AJC).

"On the whole, people are very, very uplifted by this," said Marco Mendicino, a lawyer in Toronto with the Public Prosecution Service of Canada (PPSC). "To the extent that there is going to be more restraint [legislation in the future], this decision acts as a bit of a bulwark against that. It's another arrow in our quiver."

In the wake of the court's removal of the salary cap for 2006-2007, Mendicino said the AJC wants to negotiate with Treasury Board for "competitive" increases to its members' base salaries for that fiscal year. The AJC is still considering what remedy it will request from the court, he added.

At press time, the federal government had not yet disclosed whether it would appeal the decision.

"We will review it carefully and determine the appropriate course of action required in the near future," said Treasury Board



PAUL LAWRENCE FOR THE LAWYERS WEEKLY
Marco Mendicino, president of the Association of Justice Counsel, stands in front of Old City Hall in Toronto. Mendicino's group just saw a 2.5 per cent wage cap imposed by the federal government for 2006-07 struck down in Ontario Superior Court.

spokesperson Anabel Lindblad. "Any additional comment would not be appropriate at this time due to the possibility of further legal proceedings."

As it is, the government scored a part victory in the Nov. 1 ruling: The Ontario Superior Court rejected the AJC's Charter attack

on the salary caps imposed in the subsequent four fiscal years, ended March 31, 2011.

Yet, Justice Duncan Grace ruled that the Stephen Harper government overreached constitutionally by making its five-year public service wage restraint law, which was sparked by the 2008

worldwide financial crisis, applicable to AJC members in the fiscal year 2006-2007.

At that time, the economy was still buoyant, and the federal government boasted a large budgetary surplus. The AJC had just started to bargain with Treasury
See **Pay** Page 4

Highlights

TIME TRAVEL

The Wayback Machine means that the Internet never forgets anything posted online

PAGE 9

NO BAILOUTS

Claiming bankruptcy while carrying student loans is not an easy task

PAGE 15

SHORT AND SWEET



Work harder in shorter spurts to boost overall performance

PAGE 21

ONLINE LEARNING

Law courses in cyberspace increase accessibility for students

PAGE 24

» EXCLUSIVE INTERVIEW

Charron praises system that others 'envy'

CRISTIN SCHMITZ OTTAWA

Imagine being in an arranged marriage — with not one but eight lawyers. Being a Supreme Court of Canada judge sometimes feels like that, says newly retired Justice Louise Charron in her only interview since leaving the court last August.

"You don't wake up in love with your eight marital partners



For video excerpts of the 90-minute exclusive interview go to www.lawyersweekly.ca

every morning, obviously not, but I think you have to be focused on the task," Justice Charron said.

"It's not about you and it's not about them as persons — and you've got to repeat that to yourself when times get difficult."

Justice Charron praises the McLachlin court, which she says

has been characterized by civil communication lines that "have always been very open" — without the bitterness and factionalism that sometimes plagued previous courts.

"My measure of if a work environment is healthy or not is the amount of laughter that you

hear — there's a lot of laughter that you hear on the second floor" of the judges' chambers, she says. "We may be laughing at each other, mind you, or our judgments. But we laugh, and that's very important, so it's a good court and I am hoping it will continue to be so."

Asked what she thinks helps a judge to survive and thrive at the Supreme Court, she says being
See **Exclusive** Page 8



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Names in the News

NEWS

MOVES

■ *Borden Ladner Gervais LLP* (BLG) added five lawyers to its team. **Cynthia Westaway** has joined BLG as counsel in the firm's Ottawa office. Westaway specializes in Aboriginal, labour and employment and public law, and was previously with *Gowling Lafleur Henderson LLP*. **Craig Chiasson** has re-joined BLG as counsel as a part of the international trade and arbitration group at the firm's Vancouver office. Chiasson has significant experience in commercial and investment treaty dispute resolution, and was formerly with *Freshfields Bruckhaus Deringer LLP* in Paris, France. **Adam Guy, Isaac Tang and Daniel Girlando** have joined BLG's Toronto office as associates.

■ Many changes have taken place at *Fraser Milner Casgrain LLP (FMC)* with the appointment of litigator **Tamela Coates**, a 23-year firm veteran, as managing partner at the firm's Calgary office. **Brian Cohen**, formerly of *Borden Ladner Gervais LLP* has joined FMC's Toronto office as a partner in the wealth management group, along with **Karen Groulx** who will be working as partner in the Toronto office's construction law group. Groulx was previously with *Pallett Valo LLP*.

ANNOUNCEMENTS

■ Montreal law firm *Kaufman Laramie LLP* has announced the expansion of its commercial practice with the addition of a business immigration law department. **Anna Di Stasio** has joined the firm as partner and will be leading the new team of specialized immigration lawyers.

■ Toronto's *Filion Wakely Thorup Angeletti LLP* has joined *L&E Global*, an international alliance of firms providing counsel to employers on labour, employment, workplace privacy, employee benefits and immigration law. The move makes the firm the latest addition to a group of nine employment law firms from Europe, U.S., and the Asia-Pacific region.

Court strikes down pay cap

Pay

Continued From Page 1

Board after being certified as its members' bargaining agent in April 2006.

After being hit by the restraint measures, the AJC went to court to argue that the salary caps imposed by the 2009 *Expenditure Relief Act* (ERA) on federal employees from May 6, 2006, to March 31, 2011, unjustifiably infringed its members' Charter-protected freedom of association, by eliminating their ability to bargain collectively for higher annual salary increases than the 1.5 per cent to 2.5 per cent imposed by the ERA.

Justice Grace agreed that the ERA violated s. 2(d) in the Charter of Rights and Freedoms because it rendered useless any attempts to negotiate salaries.

However, the judge also accepted the government's argument that a temporary suspension of collective bargaining to address "a multifaceted economic crisis affecting the financial well-being of the public" was war-

ranted in 2008, despite the impairment of the lawyers' right to freely negotiate their salaries.

On the other hand, limiting the lawyers' freedom of association in 2006-2007 could not be upheld as reasonable and demon-

When talks began in 2006 the AJC asked for a 35-per-cent increase over four (later five) years, while Treasury Board offered 4.5 per cent over three years (later 6.8 per cent over four years).

Ontario Crowns in the comparable CC 2/3 category. (In Toronto, federal intermediate-level Crowns earn \$82,927 to \$136,994.) In British Columbia, Crowns earn \$96,438 to \$125,068 (LC2) and \$128,786 to \$145,368 (LC3); in Alberta, Crowns earn from \$109,886 to \$140,162 (LO2) and \$138,528 to \$161,840 (LO3).

"We are hemorrhaging lawyers as of right now in Alberta," Mendicino said.

"The crime omnibus bill, Bill C-10, will undoubtedly add more work because it introduces a suite of stiffer penalties, which will result in more contested trials," he said. "The question is whether or not the system is properly resourced to handle...not just the additional trials, but the constitutional challenges that will be launched against many of the provisions."

Without adequate resources and compensation, "You can talk as hard as you want, and as tough as you want, about law and order, but you won't be able to make good on it." ■

“

The question is whether or not the system is properly resourced to handle...not just the additional trials, but the constitutional challenges that will be launched against many of the provisions.

Marco Mendicino, AJC president

strably justified under s. 1 of the Charter, he held. This was because the conditions that gave rise to the ERA's aim of cost containment and other goals did not emerge until after 2006-2007. Therefore, the lawyers' Charter rights were not minimally impaired by the wage cap in 2006-2007, and could not be upheld under s. 1, he concluded.

In Ontario, where two-thirds of the AJC's members work, provincial Crowns earn 36 per cent more than their federal counterparts, he pointed out.

According to AJC data, federal intermediate-level Crowns (the LA2A level where most work) earn from \$82,917 to \$118,995, compared with a range of \$112,183 to \$184,530 for

Walker 'let clients down', his lawyer says

Ban

Continued From Page 3

firm, or allow his name to appear on any lawyer's or law firm's letterhead, without that society's written consent for 10 years.

The Lawyers Weekly could not find Walker for comment. His lawyer, L. John Alexander of the Victoria firm of Cox Taylor said Walker didn't fight the law society proceedings.

"Walker accepted that his actions let his client down," Alexander said.

But, he said the securities commission didn't accept the contention that Walker's actions didn't necessarily constitute fraud.

Alexander said he presented three scenarios for using borrowed money: One would be to buy a car, the second would be to pay for surgery for one's mother, and the third would be to buy stocks.

He said Walker questions why the third would constitute fraud while the others do not. "How does it make a difference what you use the money for? It's quite frustrating. Such is the life of a judicial review of an administrative tribunal.

"What is the public need to prevent Mr. Walker from having any involvement in the securities industry?" he asked. "He's never denied the facts...that the three directors borrowing the money

“

What is the public need to prevent Mr. Walker from having any involvement in the securities industry?

L. John Alexander,
Cox Taylor

was inappropriate. When asked, it was paid back. How does that come to be seen as fraud?"

On April 6, an Alberta Securities Commission panel reciprocated the B.C. ban against the

three until at least Oct. 7, 2020 (*Walker, Re*).

Walker has also been the subject of a Law Society of Upper Canada administrative suspension since 1983. A lawyer can be suspended for administrative reasons, such as failing to pay fees or file forms on time. A suspended lawyer is not permitted by the Ontario society to practise law or provide legal services. He has no discipline history with the Ontario society. ■

Reasons: *Walker v. British Columbia (Securities Commission)*, [2011] B.C.J. No. 2020; *Walker, Re*, 2011 ABASC 150.

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Rob Kelly

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Correspondents

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Arnold Ceballos, LL.B., Toronto
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Geoff Kirbyson, Winnipeg
Luis Millan, Montreal
donalee Moulton, Halifax
Gary Oakes, Victoria
Mike Sadava, Edmonton

HOW TO REACH US

Phone: (905) 479-2665
Toll-free: 1-800-668-6481
Fax: (905) 479-3758
Email: comment@lawyersweekly.ca

Main Office

123 Commerce Valley Drive East
Suite 700, Markham, ON L3T 7W8
Phone: (905) 479-2665

Ottawa Bureau

c/o Parliamentary Press Gallery
Rm 350-N, Centre Block
Parliament Hill, Ottawa, ON K1A 0A6
Phone: (613) 820-2794
Fax: (613) 995-5795

Website: www.lawyersweekly.ca

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(416) 340-1981; Fax: (416) 340-8724

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Advertising Sales

Jim Grice (905) 415-5807

Circulation Controller

Scott Welsh (905) 479-2665, ext. 324

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