



**Presentation  
To the  
House of Commons  
Standing Committee on Finance**

**By**

**The Association of Justice  
Counsel**

**Monday, February 23, 2009**

**Presentation to the House of Commons  
Standing Committee on Finance  
By The Association of Justice Counsel  
Monday, February 23, 2009**

1. The Association of Justice Counsel (AJC) is very pleased to have the opportunity to submit its views concerning the proposed *Expenditure Restraint Act* contained in Bill C-10. Our association represents over 2500 lawyers employed by the Government of Canada in the Department of Justice, Public Prosecution Service of Canada and Federal Agencies. Our members are dedicated professional public servants working in every part of Canada on a wide range of legal matters of critical importance to Canadians..

2. We asked to appear before you today because our members find themselves severely impacted by the provisions of Bill C-10 which interfere in the process of collective bargaining, in a manner which we believe to be detrimental not only to them but also to the delivery and quality of legal services provided to the Government.

3. In 2005, the federal government legislatively extended the right to collectively bargain to federal government lawyers, most of whom before then had been excluded from the right to engage in collective bargaining. Despite the general reluctance of professionals to become unionized, federal government lawyers overwhelmingly and democratically chose AJC as their certified bargaining agent.

4. In 2006, we began to negotiate our first collective agreement with Treasury Board Secretariat. Three years later, we have been unable to bring these negotiations to a successful conclusion. The process the lawyers chose for resolving these differences is binding arbitration. An arbitration board has now been established, and hearings are being scheduled, but if Bill C-10 is enacted, it would override this process and eliminate the collective bargaining rights of AJC lawyers.

5. However, as a result of exercising our right to collectively bargain, and seeking to negotiate our first collective agreement, federal lawyers are in a position where, because of the length of the bargaining process, we have not had a salary increase since April 1, 2005. If Bill C-10 passes in its current form, federal lawyers will not only be singled out as the only group deprived of the process for negotiating their first collective agreement, but also as the only group not to have a negotiated or arbitrated salary increase for the 2006-2007 year.

6. As lawyers and professionals, it did not come easy to AJC's members to choose unionization and collective bargaining. However, we were driven to this because over the past many years, the salaries of federal government lawyers

have fallen substantially behind those of our provincial government counterparts. The growing list now includes Ontario, British Columbia, Alberta, Saskatchewan, Manitoba and Nova Scotia.

7. Because we form what is effectively the largest law firm in Canada, until the late 1990s, federal government lawyers were paid salaries commensurate with that reality, and at least on par with the salaries paid to Ontario government lawyers, which is the province where almost 2/3 of federal government lawyers are employed.. However, today, depending on their years of experience, federal government lawyers now earn between 40 to 60% less than Ontario government lawyers. Our salary levels have deteriorated to such an extent that we have now fallen to seventh among government lawyers across the country.

8. This salary disparity is even more pronounced in comparison with our private sector lawyer counterparts, whom we regularly appear against in court and in representing the interests of the federal government.

9. Apart from its fundamental unfairness, the ongoing failure to redress this profound and growing salary disparity, and the resulting uncertainty and instability that has resulted, have given rise to three very serious issues for the administration of justice, which should be of concern to members of this committee and to the Government of Canada.

10. First, the federal government is having an increasingly difficult time retaining its lawyers, who perform critical tasks in many areas on behalf of Canadians, including criminal prosecutions (terrorism, organized crime, money laundering, street gangs, drug cases and Canada's commitment to the international community, e.g., the Rwanda Genocide case), constitutional law, food safety, national security, immigration, and commercial law.

11. In its most recent annual report, the Public Prosecution Service of Canada found that *"the salaries of prosecutors and lawyers in some regions of Canada continue to increase, which affects the PPSC's ability to retain its highly skilled prosecutors, hence creating a personnel shortage."* For example, in the city of Calgary, the Public Prosecution Service of Canada has lost more than half its prosecutors, and has not been able to replace them. In addition, the Prosecution Service, in its 2008 Department Performance Report, emphasized the extent to which *"the salaries of prosecutors and lawyers in the marketplace continue to increase, which affects the ... ability to recruit and retain both its highly-skilled prosecutors"*, and thereby *"creating a personnel shortage."*

12. Second, this large and growing salary disparity is hampering the ability of the federal government to recruit top notch legal talent. This will only grow worse if Bill C-10's provisions interfering with collective bargaining and arbitration are extended to federal government lawyers.

13. In the area of recruitment, the Department of Justice's own 2007-2010 Human Resources Plan emphasizes that the Department simply cannot attract experienced lawyers to replace the large number who are nearing retirement. Together with the AJC's expectation that additional federal lawyers will leave to work with other governments or the private sector as the compensation gap continues to grow, this situation will only deteriorate in the years to come, and the impact in terms of workload on those who remain will become unsustainable.

14. In the area of commercial law alone, a March 2008 presentation made by the Assistant Deputy Minister of the Business and Regulatory Law Portfolio observed that federal commercial lawyers are undervalued, and that the salary levels are so low that the government cannot compete against the private bar for new recruits. This is obviously of serious concern, since commercial law has been identified as a priority by the Privy Council Office, there is a pressing need for expertise in this area in light of the current economic situation and a desire of the Government to work towards a national securities regulator. In fact, the application of Bill C-10 to federal lawyers will likely have the perverse effect of increasing government expenditures over time, as private sector lawyers are retained to meet the in-house shortage, at much higher private sector rates, which are exempt from the restraint legislation.

15. Third, as a result of the longstanding salary disparity facing federal government lawyers, morale is at an all time low. Our lawyers are enormously proud to work for the Government of Canada and consider public service to be a singular honour. It has therefore been very disheartening to go year after year without being able to resolve matters relating to salaries and compensation. Many of our lawyers are feeling an understandable degree of frustration and resentment at the absence of a meaningful and respectful salary settlement, and at the prospect of legislative interference in the arbitration process as a result of the introduction of Bill C-10.

16. All of this brings us directly to Bill C-10. Last November's 2008 Economic and Fiscal Update, contained provisions for capping increases in federal salaries for fiscal years 2007 through to 2010, amounting to 2.3% in the first year and 1.5% in each of the subsequent three years. At the time, members of all three opposition parties decried this as an interference in collective bargaining. We were hopeful that when the Government announced its intention to table a Budget in the New Year, it would no longer be proposing to interfere with collective bargaining, including the right to strike or to arbitrate over compensation.

17. However, when Bill C-10 was tabled recently, we recognized to our complete and utter dismay that not only was the Government proposing to interfere with collective bargaining and impose wage controls for 2007-2008 to 2010-2011, but the fiscal year 2006-2007 had been added to this list, with a cap in salary growth of 2.5% for that period.

18. What makes this so utterly disheartening for federal lawyers is that having made the considered decision to engage in collective bargaining as our only viable response to the very real concerns we have over compensation levels, the process of collective bargaining is being legislatively overridden before we have even been able to negotiate our first collective agreement. What's worse, we are the only civil servants in the federal government who will be affected by this measure for fiscal year 2006-2007. In other words, lawyers working for the federal government have been singled out among all other federal employees for this negative retroactive treatment.

19. It had been our sincere hope that negotiations for 2006-07, as well as for subsequent years, would allow us to address, at least partially, the salary disparity that has grown up between ourselves and our provincial government and private sector counterparts. This would have allowed us to improve the ability to retain and recruit quality professionals, to acknowledge the vital role which federal lawyers play on behalf of the Government of Canada and Canadians, and to ensure the provision of high quality legal services which Canadian rightly expect and rely upon.

20. Instead, without any consideration of the situation facing lawyers, (and in the case of 2006-2007 seemingly as an afterthought), Bill C-10 would single us out for unfair treatment, and unfairly stymie any effective efforts on our part to collectively bargain our first collective agreement.

21. As a result, the three issues we have raised with you today will not only continue but worsen. Many more lawyers will leave the federal government to move to the provincial level or to private practice. It will become even more difficult to recruit quality professionals to the federal public service. Perhaps worst of all, the lawyers who do remain will feel demoralized and unfairly targeted as their services continue to be undervalued and their efforts and commitment unrecognized. This will have repercussions for years to come.

22. There was one other group of federal government employees in a similar situation to the AJC -- both in terms of negotiating their first collective agreement, and in terms of seeking to redress a significant salary disparity with employees performing comparable functions to their own. These are the border guards and agents employed by the Canada Border Services Agency. Yet, three days before the November Economic Statement, the border guards reached a collective agreement with Treasury Board, providing for salary increases of at least 19.5% over a four year period. Unlike federal lawyers, not only were they permitted to engage in the process of collective bargaining, but their salary increases are exempted from the application of Bill C-10 by virtue of sections 30 and 31.

23. We urge the members of this Committee to amend Bill C-10 to provide a similar exemption for any collective agreement negotiated or arbitrated for federal government lawyers. We seek equitable treatment, not only for ourselves, but in the interests of ensuring the provision of high quality legal services to the people of Canada.

24. Bill C-10 should be amended to permit us to continue the process of negotiating and arbitrating our first collective agreement. The imposition of wage controls for a five year period, dating back to 2006-2007, would uniquely and arbitrarily single us out for unfair treatment. However serious the present economic situation is, it cannot justify imposing wage controls retroactively on federal government lawyers for three years (2006-2009) and for a total of five years.

25. Finally, we respectfully urge the members of this Committee to seriously consider and obtain advice on the constitutionality of Bill C-10, both in its general application, and in its specific and disproportionate impact on lawyers. In 2007 the Supreme Court of Canada ruled in *Health Services and Support – Facilities Subsector Bargaining Assn. vs. British Columbia*, [2007] 2 R.C.S. 391, 2007 CSC 27, that the freedom of association guarantee in s. 2(d) of the *Canadian Charter of Rights and Freedoms* extends to collective bargaining. The Court made crystal clear that legislatively overriding the process of collective bargaining, preventing employees from being able to negotiate over significant terms and conditions of employment, and in the place of free collective bargaining imposing the terms of a collective agreement, violates the *Charter of Rights'* guarantee of freedom of association. The Court also emphasized that the Charter guarantee of freedom of association applies to government both in its capacity as legislator and in its capacity as employer. In AJC's view, if enacted, Bill C-10 would constitute an unjustified interference in the constitutional right of AJC members to collectively.

With that, I would thank you for your attention and would be happy to entertain any questions you may have.