

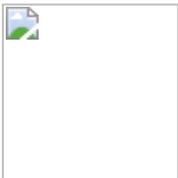


FIELD LAW

Labour and Employment

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Injunction Granted: Public Service Salary Restraint Act "Guts the Bargaining Process"



By [Christin Elawny](#)

Although other governments in Canada have imposed wage capping legislation, the *Public Service Salary Restraint Act*, SA 2013, c. P-43 (the "PSSRA") is unique given its "very broad and very focused effect" on one group, the Crown bargaining unit of the Alberta Union of Provincial Employees ("AUPE"). In its decision released February 14, 2014, the Court of Queen's Bench stated that the PSSRA, "guts the bargaining process by removing any effective leverage on the part of the workers who, as a result of other provincial laws, cannot withdraw their labour. The effect of this legislation is to emasculate the AUPE..."

Bill 46, the PSSRA became legislation in early December 2013 at the same time as another Bill aimed directly at public workers. Bill 45, the *Public Sector Services Continuation Act*, was introduced in response to an illegal strike by corrections officers who were members of AUPE. This Act applies to 100,000 unionized workers in Alberta, who are members of a number of unions including AUPE, and who are already prohibited from striking and imposed additional penalties on unions and their members regarding illegal strikes.

The PSSRA, as mentioned above, was aimed at a very specific group of public workers, those members of AUPE who worked for the Government of Alberta. The PSSRA terminated the right to compulsory arbitration by AUPE and the Government of Alberta ("Alberta") [a right provided for in the *Public Service Employee Relations Act*, RSA 2000, c. P-43 ("PSERA")]. Additionally, in the event that AUPE and Alberta were not able to enter into a collective agreement by January 31, 2014, it would have deemed the May 17, 2011 collective agreement between Alberta and the AUPE to be in effect from April 1, 2013 to March 31, 2017. The PSSRA would also have resulted in no pay increase for bargaining unit members for April 2013 to March 2015 and a modest 1% pay increase in each of April 2015 to March 2016 and April 2016 to March 2017.

AUPE sought a stay of the operation of the PSSRA on the basis that it breached s. 2(d) of the *Canadian Charter of Rights and Freedoms*. An interim injunction staying the legislation was issued on January 28, 2014 and subsequently an Order in Council was passed by Alberta, extending the deadline for a new collective agreement to March 31, 2014. The interim injunction was imposed to provide the Court with additional time to provide full and detailed reasons for its decision to either grant or refuse the application for an injunction. These reasons were issued on February 14, 2014.

In conducting its analysis of whether the injunction should be granted, the Court determined that there was a serious issue to be tried. The Court noted that the timeline and events prior to the passage of Bill 46 were such that it was apparent Alberta never intended that the 2013 negotiations that took place with AUPE were intended to be meaningful. The Court was particularly concerned with the fact that Alberta and AUPE had come to meaningful agreements on certain issues during collective bargaining and that the legislation effectively "wiped the slate clean" in imposing all terms from the May 17, 2011 collective agreement.

The Court also held that the AUPE and its members would suffer irreparable harm if the injunction was not granted. The Court accepted that the operation of the PSSRA would cause ongoing injury to the relationship between the AUPE and its members, would affect morale and workplace conduct of AUPE members affected by the PSSRA and would impede future collective bargaining between AUPE and Alberta. Justice Thomas was "particularly struck by the unique and broad operation of the PSSRA. This legislation dictates the terms of an entire workplace employment arrangement without any input by the employees through their statutory bargaining agent AUPE. The scope and duration of this impact amplifies the deleterious effects of unilateral legislative control..."

Further, in determining that the balance of convenience favoured granting the injunction, the Court was troubled by the fact that the PSSRA terminated the compulsory arbitration between the parties. Justice Thomas noted that allowing the compulsory arbitration process to go forward may provide, "...an open and transparent process which allows the parties to debate their respective positions in

a public setting and on the basis of evidence, all to be observed by members of the media, and through the media, the public”, something that the Court stated is surely in the public interest.

The Court’s main concern in regard to the balance of convenience was the potential serious and long lasting damage caused by the legislation to labour relations generally and, specifically, in respect to the employer relationship with the members of the Crown bargaining unit. As the test for granting an injunction had been met, Justice Thomas ordered a stay of the *PSSRA*, effective March 31, 2014.

The effect of the injunction is that collective agreement terms will not be imposed on the parties and compulsory arbitration between Alberta and AUPE can proceed pursuant to the *PSERA*. The Government of Alberta is appealing the decision.

The Court’s decision can be found on CanLII [here](#).

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