COURT OF APPEAL FOR ONTARIO

CITATION: Association of Justice Counsel v. Canada (Attorney General), 2012 ONCA 530
DATE: 20120807
DOCKET: C54656

Sharpe, Armstrong, Pepall JJ.A.

BETWEEN

Association of Justice Counsel

Applicant (Respondent in Appeal/ Cross-Appellant)

and

Attorney General of Canada

Respondent (Appellant/ Respondent in Cross-Appeal)

Dale Yurka and Kathryn Hucal, for the respondent (appellant/ respondent in the cross appeal)

Andrew Lokan, for the applicant (respondent in appeal/cross-appellant)

Heard: June 13, 2012

On appeal from the judgment of Justice A. Duncan Grace of the Superior Court of Justice, dated November 1, 2011, with reasons reported at 2011 ONSC 6435, 108 O.R. (3d) 516.

Sharpe J.A.:

[1] This appeal involves a constitutional challenge to provisions of the *Expenditure Restraint Act*, S.C. 2009, c. 2, s. 393 (the "*ERA*") that limited compensation increases for approximately 400,000 federal employees, including the members of the respondent Association of Justice Counsel (the "AJC"), for a five year period from 2006 to 2011. The application judge concluded that those provisions infringe the freedom of association guaranteed by s. 2(d) of the *Charter* by rendering collective bargaining on salary "useless" for the five-year period of the legislation. He concluded, however, that except for the provisions limiting salaries for 2006-2007, the legislation was justified under s. 1 of the *Charter* because of pressing and substantial objectives associated with the government's need to respond to the global financial crisis of 2008.

[2] The appellant Attorney General of Canada challenges the application judge's holding that the Act infringes s. 2(d), and his conclusion that the provisions limiting salaries for 2006-07 are not justified under s. 1. The respondent cross-appeals the application judge's finding that the provisions of the Act limiting salary increases for 2007-2011 are justified under s. 1.

FACTS

[3] Until 2005, when the *Public Service Labour Relations Act*, S.C. 2003, c. 23, s. 2 (the "*PSLRA*"), came into force, Department of Justice lawyers were

prohibited from being part of a collective bargaining unit. In 2006, the AJC became the certified collective bargaining agent under the *PSLRA* for lawyers working for the federal government in the Public Prosecution Service of Canada, the Department of Justice and other federal agencies, tribunals and courts. There are now approximately 2,700 federal lawyers represented by the AJC. The Treasury Board Secretariat ("TBS"), the administrative arm of the Treasury Board, is the body that negotiates terms and conditions of employment with bargaining agents for federal public service employees.

[4] The AJC took the first step required to trigger the process of collective bargaining by serving a notice to bargain on May 10, 2006. That notice required the parties immediately to meet and bargain in good faith. At the first face-to-face negotiating session, the AJC presented its bargaining proposal seeking a salary increase of approximately 35% in order to eliminate what it claimed was a salary gap between federal and provincial crown lawyers. TBS also tabled a bargaining proposal but the rates of pay were left blank.

[5] In its representations, the AJC seems to have initially asked for a three-year agreement for the years 2006-2007, 2007-2008 and 2008-2009, but the focus was on 2006-2007 as redressing the wage gap was the AJC's central concern.

[6] Between November 22, 2006 and September 26, 2007, there were sixteen face to face negotiating sessions between the AJC and TBS. During that process, TBS did not present its wage proposal and the parties bargained over non-monetary issues. According to Marc Thibodeau, the TBS's Chief Negotiator in its dealings with the AJC, the parties agreed to negotiate non-monetary issues first. The AJC does not appear to dispute this assertion but does submit that it made repeated requests for TBS's monetary proposal.

[7] The parties met with a mediator, Kevin Burkett, for a total of five days between November 2007 and March 2008. According to Mr. Thibodeau, again an assertion not contradicted by the AJC, the mediator encouraged the parties to address non-monetary issues first.

[8] On the day of the final mediation session, March 29, 2008, TBS presented its wage proposal, consisting of annual 1.5% increases going back to 2006. The TBS proposal effectively rejected the AJC's demand for a salary adjustment to address the alleged salary gap for its members. The AJC rejected the TBS proposal and indicated that it would begin the process of arbitration pursuant to the *PSLRA.*

[9] Between April and September 2008, the parties discussed possible arbitrators but failed to agree on one. In September 2008, TBS referred all

outstanding issues, including the appointment of the arbitrator, to the PSLRB, pursuant to the *PSLRA*, s. 136.

[10] In November 2008, TBS made what it described as a "final offer" which included a 2.5% salary increase for 2006-2007, 2.3% for 2007-2008 and 1.5% for each fiscal year through 2010-2011. In making that offer, TBS referred to a speech by the Minister of Finance that the government was looking for cost containment and predictability of expenditures for the period 2007-2011. The AJC rejected TBS's final offer.

[11] In March 2009, the *ERA* came into force, prohibiting any salary increases above the amounts contained in the final TBS offer.

[12] The arbitration on the merits proceeded in June of 2009 and established the maximum salary increases permitted by the *ERA*. These increases were implemented in a collective agreement signed July 27, 2010.

[13] The AJC launched this challenge to the *ERA* in June 2010, alleging that the Act infringed on the right to engage in collective bargaining protected by *Charter* s. 2(d) freedom of association.

[14] A detailed outline of the entire course of bargaining, negotiation and dealings, taken from the Thibodeau affidavit, is set out in an Appendix to these reasons.

THE REASONS OF THE APPLICATION JUDGE

[15] The application judge reviewed the Supreme Court's decisions in *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391, and *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3, concluding that they stood for the proposition that:

> [C]ollective bargaining is an integral component of the right of association but that its constitutional protection is limited. Unionized employees have the right to make representations concerning the terms and conditions of employment and to have them considered in good faith by employers. Legislation which makes the process of presentation and consideration impossible or pointless violates s. 2(d).

[16] The application judge found that the *ERA* infringed the freedom of association guaranteed by s. 2(d) because the Act related to salaries, an issue important to collective bargaining, and because it prevented meaningful discussion and consultation between the AJC and the TBS by taking salaries off the negotiating table.

[17] The government relied on s. 1 of the *Charter* and sought to justify any limit on s. 2(d) as being reasonable. The application judge found that the objectives of the *ERA* were those asserted by the Attorney General, reducing upward pressure on private sector wages, showing leadership in respecting public money and

assisting the government in managing its medium term fiscal position, as well as a fourth objective, identified by the ACJ, of containing costs. He found that, given the circumstances of the 2008 global financial crisis, all four objectives were pressing and substantial. He concluded that the impugned provisions are rationally connected to these objectives and that, but for the provisions relating to 2006-07, the proportionality test was satisfied.

[18] The application judge held, however, that the provisions limiting wage increases for the 2006-2007 fiscal year failed at the minimal impairment stage. The year 2006-2007 predated the economic crisis. Moreover, the *ERA* permitted some groups – but not lawyers represented by the AJC – to continue bargaining to restructure their base salaries during the period affected by the legislation. The application judge suggested that the government treated the lawyers' category differently to avoid the risk that arbitration would result in a substantial retroactive salary increase. As the *ERA* permitted some groups to continue to negotiate restructured salaries, limiting the respondents' right to do so was not minimally impairing.

[19] The application judge concluded, accordingly, that s. 16(a), limiting salary increases for 2006-07 and s. 34(1)(a), applying statutory increases to the salaries paid to federal lawyers at the time that the Association served notice to bargain, should be struck down as an infringement of s. 2(d) but that the challenge to the balance of the *ERA* failed.

OTHER CHALLENGES TO THE *ERA*

[20] We were advised by the parties that there are a number of pending cases dealing with s. 2(d) challenges to the *ERA*. In *Meredith et al. v. Attorney General of Canada*, 2011 FC 735, [2011] F.C.J. No. 948, the Federal Court ruled that provisions of the *ERA* that effectively prevented the Treasury Board from considering the submissions of the RCMP Pay Council in setting wages infringed RCMP officers' s. 2(d) rights, and that this infringement was not justified under s. 1. In *Federal Government Dockyard Trades and Labour Council v. Canada (Attorney General)*, 2011 BCSC 1210, 243 C.R.R. (2d) 158, the British Columbia Supreme Court ruled that provisions of the *ERA* that overrode an arbitral award favourable to dockyard workers did not violate collective bargaining rights protected by s. 2(d) because the provisions did not interfere with a freely negotiated term of a collective bargaining agreement. In *Association des réalisateurs c. Canada (Procureur général), 2012 QCCS 3223*, [2012] J.Q. no 6770, the Quebec Superior Court held that provisions of the *ERA* that overrode wage terms of pre-existing collective bargaining agreements between the CBC and two unions and prevented further negotiation on wages for the period of the legislation violated s. 2(d), and that this violation was not justified under s. 1 because the government can control its allocation of funding to the CBC directly without interfering with CBC workers' collective bargaining. None of these cases turn on the effect of the *ERA* on compensation for a period of time for which the

applicants had already made submissions, but for which no agreement or arbitral award had yet been made.

[21] This is the first s. 2(d) challenge to the *ERA* to reach a court of appeal.

ISSUES

(i) Did the application judge err in holding that the Act infringes s. 2(d)?

(ii) Did the application judge err in holding that the provisions limiting salaries for 2006-2007 were not justified under s. 1?

ANALYSIS

(1) Did the application judge err in holding that the Act infringes s. 2(d)?

(a) The evolution of s. 2(d) in the context of labour relations

[22] The interpretation of the s. 2(d) right to freedom of association in the context of labour relations has undergone considerable evolution since the enactment of the *Charter*. While I will offer a brief review of that evolution to locate the present case, it is my view that we must take the law to be as stated by the Supreme Court of Canada in its most recent pronouncement on the issue in *Fraser*.

[23] The Supreme Court initially held in the "labour trilogy" that the guarantee of freedom of association did not encompass the right to strike: *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 ("*Alberta*

Reference"); *PSAC v. Canada*, [1987] 1 S.C.R. 424; *RWDSU v. Saskatchewan*, [1987] 1 S.C.R. 460. Three of six Justices held, in *Alberta Reference* that the protection of s. 2(d) was limited to "the freedom to work for the establishment of an association, to belong to an association, to maintain it, and to participate in its lawful activity without penalty or reprisal" (p. 391) and that it did not protect the right to engage in collective bargaining: see p. 390, Le Dain J. (joined by Beetz and La Forest JJ.).

[24] The court began to move away from that position in *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016, when it held that s. 2(d) protects the rights of workers to organize and may require governments to provide a legislative framework to enable workers to engage in a meaningful process of collectively pursuing workplace goals. *Dunmore* involved the claim of agricultural workers who had been excluded from Ontario's statutory regime governing collective bargaining. The court held, at para. 30, that "the freedom to collectively embody the interests of individual workers" fell within the protection of s. 2(d) and that the exclusion of agricultural workers from the protective legislative regime governing collective bargaining substantially interfered with agricultural workers' freedom to organize.

[25] A further significant development occurred in *Health Services* where the Court held, at para. 19, that s. 2(d) protects the "capacity of members of labour unions to engage, in association, in collective bargaining on fundamental

workplace issues". The Court held that provincial legislation invalidating bumping and outsourcing provisions in existing collective agreements and effectively barring future collective bargaining on those issues violated s. 2(d).

[26] Most recently, in *Fraser*, the Court clarified and limited the reach of *Health Services* and the extent to which s. 2(d) protects rights of collective bargaining. In *Fraser*, the Court returned to the issue first confronted in *Dunmore,* namely the claim of agricultural workers to s. 2(d) protection. *Fraser* involved a challenge to the adequacy of the legislature's response to *Dunmore*, the *Agricultural Employees Protection Act, 2002*, S.O. 2002, c. 16 ("*AEPA*"). That act maintained the exclusion of farm workers from the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A (the "*LRA*"), and created a distinct labour relations regime for agricultural workers. *AEPA* gave agricultural workers the right to form and join employees' associations and to make representations to employers on terms and conditions of employment without discrimination or interference in the exercise of those rights. *AEPA* also required employers to give workers' associations the opportunity to make representations respecting terms and conditions of employment. However, *AEPA* stopped well short of conferring on agricultural workers the full rights enjoyed by workers governed by the *LRA*. As the court explained at para. 7, the agricultural workers argued that they were denied the protections guaranteed by s. 2(d) as elaborated in *Health Services* because they did not enjoy:

> (1) statutory protection for majoritarian exclusivity, meaning that each bargaining unit is represented by a single bargaining agent; (2) an *LRA*-type statutory mechanism to resolve bargaining impasses and interpret collective agreements; and (3) a statutory duty to bargain in good faith.

[27] The majority decision, written by McLachlin C.J. and LeBel J. (joined by Binnie, Fish and Cromwell JJ.), rejected that submission and dismissed the agricultural workers' claim of a s. 2(d) infringement. Deschamps J. agreed with that result but would have read *Health Services* even more narrowly than the majority, while Rothstein J. (joined by Charron J.), would have overruled *Health Services* as an unwarranted extension of s. 2(d) and departure from the court's earlier jurisprudence. Only Abella J., dissenting, would have found a s. 2(d) violation.

[28] The majority reasons of McLachlin C.J. and LeBel J. hold that *Health Services* affirms "that bargaining activities protected by s. 2(d) in the labour relations context include good faith bargaining on important workplace issues" and that this "is not limited to a mere right to make representations to one's employer, but requires the employer to engage in a process of consideration and discussion to have them considered by the employer": *Fraser*, at para. 40.

[29] At para. 41, the majority sets out the fundamental elements of what constitutes good faith negotiation:

> Section 2(d) requires the parties to meet and engage in meaningful dialogue. They must avoid unnecessary delays and make a reasonable effort to arrive at an acceptable contract;
>
> Section 2(d) does not impose a particular process. Different situations may demand different processes and timelines;
>
> Section 2(d) does not require the parties to conclude an agreement or accept any particular terms and does not guarantee a legislated dispute resolution mechanism in the case of an impasse;
>
> Section 2(d) protects only "the right . . . to a general process of collective bargaining, not to a particular model of labour relations, nor to a specific bargaining method". [Citations omitted.]

[30] The majority further stated, at para. 42, that *Health Services* emphasizes "that s. 2(d) does not require a particular model of bargaining, nor a particular outcome" but that s. 2(d) does guarantee a "meaningful process" in the labour relations context. The right to a "meaningful process" can be infringed by a ban on employee associations or by setting up "a system that makes it impossible to have meaningful negotiations on workplace matters".

[31] The majority summarized the effect of *Heath Services* and *Dunmore* in the following language, at para. 43:

> In summary, *Health Services* applied the principles developed in *Dunmore* and explained more fully what is required to avoid interfering with associational activity in pursuit of workplace goals and undermining the associational right protected by s. 2(*d*). Its suggestion

> that this requires a good faith process of consideration by the employer of employee representations and of discussion with their representatives is hardly radical. It is difficult to imagine a meaningful collective process in pursuit of workplace aims that does not involve the employer at least considering, in good faith, employee representations. The protection for collective bargaining in the sense affirmed in *Health Services* is quite simply a necessary condition of meaningful association in the workplace context.

[32] This court considered *Heath Services* and *Fraser* in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2012 ONCA 363, [2012] O.J. No. 2420. That case, like *Fraser* and *Dunmore,* dealt with what might be described as the "positive right" component of s. 2(d): the issue of the adequacy of legislation to ensure effective bargaining rights. Juriansz J.A. conducted a comprehensive review of the authorities and held that *Fraser* should be interpreted as establishing that it is only where legislation, or the lack thereof, renders the pursuit of collective goals "effectively impossible" that a claim that s. 2(d) obliges the government to take positive action is made out. This case, like *Heath Services*, involves what might be described as the "negative right" component of s. 2(d): the issue of whether impugned legislation impinges upon or interferes with the s. 2(d) rights of those who are already part of a full collective bargaining scheme. In my view, the substantive content of s. 2(d) must be the same whether raised as a sword to claim the positive right to an effective legislative regime to protect freedom of association or used as a shield to defend

against legislation that impinges upon existing statutory protections. It follows that the "effectively impossible" test applies to this case.

(b) Application of the *Fraser* principles to this case

[33] I now turn to the central issue raised on this appeal: did the *ERA* infringe the respondents' s. 2(d) rights?

[34] In my view, this question must be assessed on the facts of this case and on the basis of the impact the *ERA* had on the process of collective bargaining in which these parties had engaged.

[35] As I have explained in my discussion of the facts giving rise to this appeal, by the time the *ERA* came into force, the parties had engaged in a lengthy process of collective bargaining over a two-year period. The parties had conducted sixteen face-to-face negotiating sessions and participated in five days of mediation. This process led to an impasse that took the parties to arbitration. The AJC had made very full representations to TBS as to the terms it proposed for its first collective agreement. TBS set forth its position on those issues.

[36] The *PSLRA*, s. 106, requires the parties "to meet and…bargain collectively in good faith". The AJC did not complain that TBS failed to comply with that duty. The application judge noted, at para. 68, that the AJC "seemed to maintain [that] the Treasury Board did not negotiate in good faith", but he found that despite the

substantial record before him, that he "was unable to form even a tentative view on this topic". That finding is not challenged before us.

[37] *Fraser* holds that s. 2(d) guarantees a process, not a result. The parties had engaged in a process that permitted the AJC to present the collective demands of its members to TBS and required TBS to consider those demands in good faith. While TBS certainly adopted a tough bargaining position throughout, it was not established either that the AJC was denied the full opportunity to present the wage demands of its members, or that TBS failed to consider those demands in good faith.

[38] *Fraser* holds, at para. 41, that s. 2(d) "does not require the parties to conclude an agreement or accept any particular terms" and the AJC therefore cannot claim that s. 2(d) was violated because the process of collective bargaining failed to yield an agreement.

[39] There can be little doubt that once the *ERA* was enacted, the wage settlement flowing from the arbitration was a foregone conclusion and that the AJC had no hope of achieving its objective of eliminating the salary gap of which it complained. The AJC does not and cannot maintain that the statutory right to arbitration attracts constitutional protection. As *Fraser* also makes clear, s. 2(d) only protects "the right to collective bargaining in the minimal sense of good faith exchanges" (para. 90) but "does not impose a particular process" and "does not

guarantee a legislated dispute resolution mechanism in the case of an impasse": para. 41. Accordingly, although the *ERA* had the effect of taking wages off the table for the arbitration, that does not, standing alone, amount to an infringement of s. 2(d).

[40] The application judge held, and the AJC contends before us, that even though the parties had reached an impasse and proceeded to arbitration, further negotiation was still possible before it was cut off by the *ERA*.

[41] I am unable to accept that submission. Further negotiation may be possible after the constitutionally protected phase of the process of bargaining has concluded but that possibility, a remote one on the facts of this case, does not expand the scope of the protected right. *Fraser* makes clear that s. 2(d) has limits: it does not guarantee any dispute resolution process after the parties have reached an impasse and it does not guarantee any particular outcome. In my view, the validity of the *ERA* must be assessed on the basis of whether, at the time it was enacted, the parties had had the opportunity for a meaningful process of collective bargaining. If they had, s. 2(d) is satisfied. The faint hope of further negotiations in the shadow of a dispute resolution mechanism not protected by s. 2(d) cannot expand or extend the reach of s. 2(d) beyond its core guarantee.

[42] I conclude, accordingly, that the AJC has failed to demonstrate that the *ERA* infringed the rights of its members to engage in a meaningful process of collective bargaining and that the claim under s. 2(d) must fail.

[43] For the sake of completeness, I would note that it is unclear from the record whether, before the introduction of the *ERA*, the parties had engaged in a meaningful process of collective bargaining with respect to salary increases for the fiscal years 2009-2010 and 2010-2011. However, neither party sought a finding before the application judge or before this court (although the point was raised by the panel in oral argument) that the *ERA* violated s. 2(d) by precluding bargaining with respect to those years in particular.

Issue 2. Did the application judge err in holding that the provisions setting salaries for 2006-2007 were not justified under s. 1?

[44] As I have concluded that the *ERA* did not violate AJC's s. 2(d) rights with respect to the 2006-2007 year, it is not necessary for me to consider this issue.

CONCLUSION

[45] For these reasons I would allow the appeal, dismiss the cross-appeal and set aside the application judge's declaration of partial invalidity. In accordance with the agreement reached by the parties, the appellant is entitled to costs fixed at $15,000 inclusive of disbursements and applicable taxes. The AJC concedes that if the appeal is allowed the appellant is entitled to its costs of the application.

If the parties are unable to agree as to those costs, the matter is remitted to the application judge for his consideration.

"Robert J. Sharpe J.A."
"I agree R.P. Armstrong J.A."
"I agree S.E. Pepall J.A."

Released: August 07, 2012

APPENDIX

May 10, 2006.	• The AJC served the Notice to Bargain
July 2006	• The President of the AJC wrote to TBS suggesting dates to meet in October 2006 for the exchange of proposals. • In the meantime, the parties communicated regarding other preliminary matters such as the process for exclusions and collection of union dues.
September 8, 2006	• Counsel for the AJC wrote to TBS and advised that he was not in a position to bargain given the work the AJC had to do to obtain a full mandate from its membership and other personal reasons. • First negotiations sessions set for the end of November 2006. • Discussions focussed on settling matters relating to union administration and dues.
October 13, 2006	• TBS delivered a proposal which included proposed language for the use of employer's facility, leave for AJC business and deduction of union dues.
November 2, 2006	• An MOU on interim terms and conditions of employment signed between the AJC and TBS. This allowed the TBS to begin collecting the dues on the AJC's behalf.
November 22 and 23, 2006	• First formal negotiation sessions between TBS and the AJC • The AJC and TBS exchanged proposals. The AJC was seeking a salary increase in excess of 35%.
Week of January 22, 2007	• Negotiation session took place. • AJC provided its revised bargaining proposal. • Parties discussed leave for union representatives, use of video surveillance, vacation carry over and the grievance procedure.
Week of February 2007	• Parties discussed paid and unpaid leave for union representatives, advances of sick leave. • Education, training and career development for the LA group was also discussed
February and March 2007	• TBS continued work following up on AJC requests for disclosure and proposals, reviewing material relating to the mobility of counsel between provinces and territories, the AJC's proposed legal indemnification clause, court clothing

	entitlements.
Week of April 11 to 13, 2007	• Parties discussed the no discrimination clause, leave for union representatives, union dues deduction for employees in acting positions, and leave for the President of the AJC.
Week of June 26 to 28, 2007	• A variety of issues were discussed. • Court clothing for litigators in the LA group was negotiated.
September 17, 25 and 26, 2007	• Discussions included the disclosure of requested information, timekeeping, leave for union business, vacation carry over, publication of scholarly works, education and training, professional responsibility, legal indemnification, security compensation, response on grievances, and National Joint Council matters. • Parties agreed to request the services of a mediator
October 15, 2007	• TBS and the AJC made a mutual request to the PSLRB for mediation. • The parties agreed to Kevin Burkett as the mediator.
Nov. 14, 2007	• First Mediation session with mediator Kevin Burkett • During this first mediation session, the mediator directed the parties to initially deal with the non-monetary issues.
December 19, 2007	• TBS addressed the AJC's proposal of November 14, 2007. • TBS(1) amended its position on the LA statement of duties to accept the AJC's last position (2) withdrew its demand for Health Canada Assessments relating to sick leave, resolving this issue between the parties and (3) withdrew its demand relating to publication and authorship of scholarly works recognizing that this issue would not be dealt with in the collective agreement. • AJC representatives refused to advise whether or not he AJC would opt out of National Joint Council directives and said they may wait until the end of negotiations to do so. • In preparation for negotiations on compensation, TBS provided the Treasury Board Policy Framework for the Management of Compensation, effective February 22, 2007, to the AJC.
January 15, 2008	• TBS provided the AJC with a 'without prejudice' proposal addressing the following issues: o Parking

	○ Various types of paid and unpaid leave, including sick leave, education and training leave ○ Dues ○ Management Rights ○ Court clothing ○ Meal reimbursement ○ Legal indemnification ○ Alternate work arrangements • Certain issues had been resolved by this point, including aspects of: ○ Publication and authorship ○ Discipline and discharge ○ Statement of duties ○ Access to employment files
January 19 and 20, 2008	• Longer mediation sessions took place
March 29, 2008	• Longer mediation session took place • TBS completed its response to the AJC's November 2007 salary proposal • Representatives from the AJC bargaining team reacted negatively to the TBS proposal. • AJC advised that they were not sure it was constructive to continue the discussion and advised they would begin the process to move to arbitration • AJC stated they would advise whether it was still useful to proceed to another scheduled mediation in June 2008.
June 2008	• The parties discussed the selection of a Chair for the arbitration but were unable to agree. • TBS took the position that the Chair had to be familiar with the *PSLRA* and the unique context of collective bargaining within the federal public service.
September 2008	• Parties reached an impasse on the identity of a Chair.
September 24, 2008	• TBS asked the PSLRB to establish an Arbitration Board to settle the remaining issues.

October 6, 2008	• The AJC responded with additional matters to be referred including some dealing with classification, staffing and pension issues.
October 27, 2008	• TBS responded to the additional mattes dealing with classification, staffing and pension issues by objecting to the jurisdiction of an Arbitration Board to deal these issues.
November 15, 2008	• TBS asked AJC if they would be interested in resuming discussions in an attempt to reach a settlement in light of the economic conditions facing Canada.
November 18, 2008	• TBS presented a final offer to the AJC • Final offer discussed with counsel for the AJC on November 25, and 26, 2008.
November 21, 2008	• TBS filed particulars with the Arbitrator.
December 5, 2008	• The AJC filed its response to the particulars.
December 15 and 16, 2008	• A terms of reference hearing was held to address the jurisdictional issues that had been raised.
February 12, 2009	• The PSLRB rendered its decision on the terms of reference for the arbitration, and established the Arbitration Board. • The PSLRB held that matters related to staffing, classification and pensions were not within its jurisdiction.
March 12, 2009	• The *Expenditure Restraint Act* came into force
May 20, 2009	• The AJC and TBS met to try to reach an agreement on additional matters. • This session proved very successful and a number of terms were resolved between the parties.

On May 25, 2009	• As one member of the Arbitration Board resigned, a replacement was appointed by the PSLRB.
	• Up to this point, the parties had reached agreement on aspects of the following issues, among others:
	  ○ Rights of Lawyers
	  ○ Representatives
	  ○ Use of Employer Facilities

	○ Membership Dues ○ Hours of Work, except for reference to overtime ○ Travelling Time ○ Other Leave With or Without Pay (Medical Appointment for Pregnant Employees) ○ Other Leave With or Without Pay (Court Leave With Pay) ○ Other Leave With or Without Pay (Injury-on-duty Leave With Pay) ○ Other Leave With or Without Pay (Religious Observance) ○ Acting Pay ○ No Discrimination • The parties had proposed the same language for the agreement, but not formally signed off, for the following issues: ○ Designated Paid Holidays ○ Vacation Leave With Pay ○ Sick Leave With Pay ○ Other Leave With or Without Pay (Bereavement Leave With Pay) ○ Other Leave With or Without Pay (Leave Without Pay for the Care of Immediate Family) ○ Other Leave With or Without Pay (Leave Without Pay for the Relocation of Spouse) ○ Other Leave With or Without Pay (Leave With Pay for Family-Related Responsibilities) ○ Other Leave With or Without Pay (Maternity-Related Reassignment or Leave) ○ Career Development (Attendance at Conferences and Conventions) ○ Career Development (Professional Development) ○ Career Development (Examination Leave With Pay) ○ Leave General ○ Employee Performance Review and Employee Files ○ Grievance Procedure ○ Joint Consultation; and

	○ Job Security
May 26, 2009	• The AJC and TBS filed Arbitration submissions. • TBS' submission is attached as **Exhibit "C"** to this my affidavit.
June 8, 9 and 10, 2009	• The Arbitration Board decided to use these first arbitration hearing days for mediation.
June 24 and 25, 2009	• The arbitration hearing continued.
October 23, 2009	• Arbitration decision and award issued. • The award addressed the following conditions of employment with respect to the collective agreement: ○ The conditions under which members would be granted leave with or without pay for various purposes; ○ Information sharing between TBS and the Association of Justice Counsel; ○ Designated paid holidays; ○ Benefits including health insurance, dental insurance, life insurance and long-term disability insurance; ○ Reimbursement for parking; ○ Hours of work; ○ Overtime allowances and rates; ○ Travelling time compensation; ○ Vacation leave; ○ Sick leave; ○ Meal expenses; ○ Office space; ○ Court clothing; ○ Annual economic increases; and ○ Salary ranges. • The award is attached as **Exhibit "D"** to this my affidavit.
November 20, 2009	• The AJC requested that the Arbitration Board rule on certain outstanding items that had not been addressed in

	the first award, nor resolved by the parties.
January 28, 2010	• Following the receipt of written submissions from both parties, the Board declined to rule on these issues. • The supplementary award is attached as **Exhibit "E"** to this my affidavit.