

Plaintiffs in pension lawsuit remind Harper government of party's opposition to pension-surplus grab

OTTAWA – Eighteen unions, employee associations and retiree groups are urging Prime Minister Stephen Harper's government to intervene in the legal dispute over the \$30.2-billion expropriation of federal public service pension surplus.

In a letter addressed to Mr. Harper, the plaintiffs in the pension lawsuit point out that current members of the Conservative Party caucus who were also Members of Parliament in 1999 voted against *Bill C-78*, the legislation passed by the Liberal government allowing for the pension-surplus grab. These include eight current members of his Cabinet and 16 members of his caucus.

"We would invite you to review the relevant extracts from *Hansard* which record the fervent opposition and criticisms conveyed by your cabinet and caucus colleagues during the debates and committee hearings on *Bill C-78* in both the House of Commons and the Senate," the letter to Mr. Harper states.

It then proceeds to mention other high-profile disputes that the Harper government has dealt with since gaining power in January 2006. "Yet, over the same time period, your government has remained silent and not taken any initiatives to correct the serious consequences for our members and their families arising from *Bill C-78*," the letter says.

The plaintiffs, comprising the 18 unions, employee associations and retiree groups, represent more than 300,000 combined memberships. They are represented by three law firms in the litigation: Nelligan O'Brien Payne, Raven Cameron Ballantyne Yazbeck, and Sack Goldblatt Mitchell.

The legal proceedings will resume on February 26, 2007. An initial six-week period has been reserved by the Ontario Superior Court for opening arguments, presentation of evidence and expert testimony. This will be followed by a two-week recess. After the recess, the Court has reserved a further three weeks for closing arguments. Once the trial has concluded, the Court will work on its judgment.

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Background:

1. By 1999, the pension plans of federal public sector workers (public service, RCMP and Canadian Forces employees), had accumulated a combined surplus of \$30.2 billion.
2. One of the main contributors to the surplus was the fact that the workers were paying into the pension fund based on calculations that assumed workers were receiving annual wage increases, when in fact they had a legislated six-year salary freeze in the 1990s. On average, federal public sector workers pay higher contributions to their pension plans compared to private sector workers.
3. On September 14, 1999, Parliament passed the *Public Sector Pension Investment Board Act* (Bill C-78), which introduced amendments to the laws covering the three pension plans, allowing the federal government to grab the \$30.2-billion surplus. The federal government is exempted from the *Pension Benefits Standards Act*, which limits employer access to any surplus in federally registered pension plans.
4. Bill C-78 also gave Government the authority to raise the mandatory employee contributions in case of a shortfall and to reduce or cease employer contributions if the pension fund accumulates a surplus in the future.
5. On November 8, 1999, unions representing workers affected by Bill C-78, employee associations and retiree groups filed a lawsuit against the federal government.
6. In total, 670,000 Canadians – or 1 in 50 Canadians across the country – are directly affected by Bill C-78. However, millions of Canadians are also affected, considering the impact Bill C-78 has on the families of the workers.
7. On top of the pension grab, on July 7, 2005, the federal government imposed yearly increases in employee contribution rates for the next eight years.
8. On December 2005, the Court rules that 128 government documents are admissible as evidence at the trial. Lawyers for the government had tried to block the written evidence in an attempt to force the unions to call the authors of all the documents during the trial, which would have created serious delays in the six-year-old case.
9. There are 18 organizations involved in the lawsuit:
 - Association of Canadian Financial Officers, Canadian Air Traffic Control Association (CAW Local 5454), Canadian Association of Professional Employees, Canadian Auto Workers (Local 2182), Canadian Federal Pilots Association, Canadian Merchant Service Guild, Canadian Military Colleges Faculty Association, Communications, Energy and Paperworkers Union of Canada, Federal Dockyard Chargehands Association, Federal Government Dockyard Trades and Labour Council (East), Federal Government Dockyard Trades and Labour Council (West), Federal Superannuates National Association, International Brotherhood of Electrical Workers (Local 2228), Professional Association of Foreign Service Officers, Professional Institute of the Public Service of Canada, Public Service Alliance of Canada, Research Council Employees' Association, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

The following arguments will be laid out during the trial:

1. The Government violated its legal obligation to use the surplus in the best interest of federal public sector workers and retirees.
2. The Government's action constitutes a breach of contract in that the pension fund is part of the terms and conditions of employment governing public sector workers.
3. Since the active and retired pension plan members contributed in part to bring about the surplus, they are at least entitled to a part of it based equitably on their share of contributions.
4. Bill C-78 discriminates against public sector workers under Canada's *Charter of Rights and Freedoms*.