

Expenditure Restraint Act – Questions and Answers

The following is CAPE's analysis of the special compensation legislation that was announced by the Minister of Finance in late November and tabled in the House of Commons on Friday February 6.

1. What is the [Expenditure Restraint Act](#)?

It is Part 10 of an [omnibus bill, Bill C-10](#), An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009. Bill C-10 was tabled in the House of Commons on Friday February 6.

2. Is the Expenditure Restraint Act the legislation to which CAPE refers when it writes about the “special compensation legislation” announced by the Minister of Finance?

Yes.

3. Now that the content of the proposed legislation has been made public, what does it say about collective bargaining?

- The legislation purports to continue the right to collectively bargain, by providing that, "subject to the provisions of the ERA", the right to bargain collectively is continued both under the Public Service Labour Relations Act, which is the relevant legislation for our TR and EC members, and under the Parliamentary Employment and Staff Relations Act, which is relevant for our members working for the Library of Parliament (Section 6).
- The legislation also purports to provide that there is no suspension of the right to strike or of the right to arbitration.
- However, in reality there are very significant restrictions on the monetary provisions that can be included in a collective agreement or arbitral award (Sections 16 to 30).

4. What are the imposed restrictions on collective agreements and arbitral awards?

- No collective agreement or arbitral award may provide for increases to rates of pay that are greater than:
 - i. 2.5% for fiscal year 2006-2007;
 - ii. 2.3% for fiscal year 2007-2008;
 - iii. 1.5% for fiscal year 2008-2009;
 - iv. 1.5% for fiscal year 2009-2010;
 - v. 1.5% for fiscal year 2010-2011. (Section 16)

- Increases to rates of pay for collective agreements entered into prior to December 8, 2008 or arbitral awards prior to the same date do not change; however, rates of pay as of December 8, 2008 for these agreements and awards must conform to Section 16 (Section 19)

- Restrictions on additional remuneration (defined as allowances, bonuses, differentials or premiums, or any payment to employees that is similar to any of those payments) are imposed (Section 24-29)

- National Joint Council Directives are excluded from the restraint provisions of the Act. (Section 4)

- Restructuring of rates of pay are prohibited during the restraint period (Section 23)

5. Are there any exceptions to the prohibition on restructuring rates of pay?

There are three exceptions. The following are exempted from Section 23 which prohibits restructuring of rates of pay: employees of the Canada Border Service, employees in the Operational Services group, and employees of the Ships Officers group.

6. What do the exemptions allow?

- The exemption for the Ships Officers group allows the application of an arbitral decision that awarded a restructuring of pay. (Section 33)
- The exemption for the Operational Services group allows a restructuring of the rates of pay during the 2009-2010 fiscal year in order to create the national rates of pay bargained in late 2008. (Section 32)
- The exemption for employees of the Canada Border Service allows a restructuring of rates pay as a result of a classification conversion. (Section 31)

7. Is there an exemption to allow for restructuring of rates of pay for EC conversion?

No.

8. Treasury Board came to the bargaining table from June 2007 to September 2008 without a mandate to negotiate pay restructuring for EC conversion. Treasury Board imposed a final offer with no money for EC conversion and without coming to the table at any time with a mandate to negotiate EC conversion. Proposed legislation now prohibits bargaining EC conversion. Will Treasury Board proceed on June 22 ,2009 with the conversion of ES and SI positions to the new EC group?

Yes.

9. Can we now answer the question that was posed last week in the previous Qs & AS: does the legislation affect all public service employees to the same degree?

We can answer the question now and the answer is: no. It would appear that the EC group is being singled out as the only group going through a conversion during the restraint period without a right to bargain the restructuring of rates of pay.

10. How important is it to try to negotiate pay rates for a conversion?

The last conversion for the ES group occurred in 1981, 28 years ago. Classification conversions occur maybe once during the career of a public service employee. It affects pay at the time of conversion and for all the years that follow. It affects pension. It is important.

CAPE cannot guarantee any results from bargaining new EC pay rates. But, it is important that the employer come to the table with a mandate for EC conversion pay, and that the parties get an opportunity to bargain EC pay rates in good faith.

11. The provisions of the Expenditure Restraint Act represent the extraordinary means chosen by the government to ensure responsible government. It is very possible that opposition parties will agree with some if not all the provisions of the proposed legislation. Is the legislation necessary, at this time, to ensure predictability of government expenditures?

No.

At this time the evidence of signed agreements and recent arbitral awards is out there to prove that it is not necessary. [Hopefully CAPE and other bargaining agents will be successful in getting either the government or the House of Commons to understand that it is not necessary.](#)

However for the purposes of the ratification vote we need to proceed as if the current provisions of the proposed legislation remain unchanged.

12. What will happen if the members of a bargaining unit, the EC unit or the TR unit, vote in favour of the final offer?

Each bargaining unit that votes in favour of the final offer will see the changes of the final offer added to its collective agreement. The new provisions will be effective as of the date of signing the collective agreement probably some time in March. Pay adjustments to salary are usually completed within two or three pay periods. Pay owed for the period of retroactivity is paid before the end of the implementation period. Because the employer has added to the final offer a change to the period of implementation, it will have 150 days rather than 90 days to provide paychecks for money owed on the pay adjustments from June 22 2007 to the date that pay rates are adjusted.

13. What will happen if the members of a bargaining unit, the EC unit or the TR unit, vote against the final offer?

Here are the rules under the current proposed legislation. There will be an impasse, and CAPE will ask the employer to return to the table to resume negotiations where they left off for that particular table before the final offer was delivered. The employer may refuse to negotiate which would force CAPE to refer outstanding matters to arbitration. However, the legislation does prohibit bargaining or arbitral awards on the matters of pay adjustments, pay restructuring, allowances, bonuses and similar payments.

14. What will CAPE do now that the Expenditure Restraint Act has been tabled?

CAPE representatives have already begun to meet members of Parliament in order to explain (1) that the legislation is not necessary, and (2) that the EC group is being treated most unfairly. The legislative process has only begun. Bill C-10 was tabled and is proceeding through second reading. Normally after second reading a budget implementation bill is referred to the House of Commons Standing Committee on Finance for discussion and possibly amendments. CAPE will ask to meet with the committee in order to make its case. CAPE will seek at the very least an amendment with language similar to the language of Section 31: the Association will seek an amendment that will allow CAPE to negotiate restructured rates of pay for the EC conversion and, in the event that no settlement is reached at the table, to refer the impasse to arbitration.

CAPE is currently investigating legal avenues of recourse as well.

15. What should TR and EC members do?

Vote.

Whether you vote yes or whether you vote no, please tell us how you feel. Please vote.