

CAPE Pension Appeal Process Sub-Committee Report and Recommendations Summary

At its meeting of May 20, 2008, the National Executive Committee (NEC) struck a sub-committee on the pension appeal process. The Sub-committee's members were Ghislain Dussault, John Horvath, Lionel Perrin and Clayton Therrien. Its general mandate was to conduct a detailed study of the pension appeal. The Sub-committee consulted, among others, the presidents of locals, CAPE's legal counsel for the appeal, the former presidents of CAPE and CUPTE, the President of CAPE and staff members. It completed its deliberations, and submitted its report to the NEC on February 18, 2009.

The highlights of the report are as follows:

- The appeal process could take another three years: two in the Court of Appeal of Ontario and six months to a year in the Supreme Court;
- The cost to CAPE of the appeal would be from \$60,000 to \$85,000, depending on whether the process ends in the Court of Appeal of Ontario or continues in the Supreme Court;
- It seems wise to allocate \$120,000 in the budget: \$40,000 in each of the next three years;
- a case is assigned on appeal to a court made up of three judges, assisted by experts, and it is therefore easier to make a more thorough presentation of arguments against the decision at trial, particularly as the number of points pursued on appeal is smaller than the number of points argued at trial;
- the same applies to the Supreme Court, whose deliberations can also assume a political dimension, since at this level, deliberations will likely focus in part on the merits of Bill C-78, which is the source of the dispute, and we know from experience that in response to public opinion – and our appeal is similar to the employment insurance appeal – a government may be placed in a position where it has to make concessions, albeit by a roundabout route;
- the former presidents of ESSA/CAPE and CUPTE are of the view that the strong symbolism of CAPE's withdrawal would be embarrassing for the other unions, and might lead to their being less inclined to work with CAPE, both in other disputes and in the day-to-day activities of the National Joint Council;

- similarly, the former presidents of ESSA/CAPE and CUPTE agree that withdrawal would probably be interpreted by the government as a sign of weakness and lack of determination;
- almost all members feel that CAPE must proceed, and go all the way, with the appeal in the pension case: the game is worth the candle not only financially – the 30 billion dollars talked of has now grown to 40 billion – but above all in terms of the principles that are the bedrock of the union movement.

Lastly, the Sub-committee made two recommendations to the NEC:

Main recommendation

Whereas in the opinion of almost all CAPE members, local officers and directors on the NEC, the pension dispute should not be considered merely from a legal and financial point of view, but should be regarded as a major political cause, in the finer sense of that term, that underpins the identity and constitutes the central purpose of a union, and in a special sense of CAPE, given its prominent role in the dispute, the Sub-committee is of the view that it should continue with the appeal in the pension case as a matter of principle, as far as the Supreme Court if necessary, while nevertheless taking care to monitor the legal and financial aspects closely and continuously, in consultation with our partners in the case.

Ancillary recommendation

Whereas the controversy surrounding this dispute within CAPE is due very largely to a lack of information and communication affecting the NEC, the Local Leadership Council and the membership at large, the Sub-committee is of the view that as LLC members have suggested, CAPE should make the pension case a major unifying cause – on the same basis as the Charter challenge – that demands communication in abundance, although with care not to jeopardize our legal interests through the inadvertent or premature disclosure of our strategy.