

NAFTA court challenge has implications for public services, plaintiffs say

Colin Perkel

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TORONTO (CP) - A challenge to the North American Free Trade Agreement gets underway in an Ontario court Monday, with plaintiffs arguing they are trying to protect Canada's public services.

The challenge, launched by the Council of Canadians and Canadian Union of Postal Workers, arises from a \$200-million claim against Ottawa by giant U.S.-based courier company UPS.

UPS claims that Canada's publicly funded mail system amounts to an unfair subsidy that gives Canada Post an unfair advantage over private-sector courier companies.

The UPS claim could damage Canada Post's ability to deliver cost-effective services across the country.

And the plaintiffs argue the stakes are even higher than that since the NAFTA provision in question could allow private companies to challenge most any public service - even health care.

"This opens the door to a systematic attack on the public service," said Jean-Yves Lefort of the Council of Canadians.

The plaintiffs say several cases have already shown the power of the trade-dispute tribunals to override environmental and health laws.

The NAFTA section at issue is one adopted in 1994.

It allows private corporations to seek redress for government policies deemed to harm their business interests through non-judicial tribunals.

Business leaders argue NAFTA has had huge economic benefits, and any problems involving the section known as Chapter 11 are minor.

Lawyer Steven Shrybman, who is leading the challenge before the Ontario Superior Court, says Ottawa exceeded its constitutional authority by agreeing to the provision.

"It's the first case to question whether or not Canada's obligations under NAFTA actually are compatible with our own constitutional arrangements and norms," said Shrybman from Ottawa.

"Foreign investors have been given the right to invoke international dispute processes that operate entirely behind closed doors and outside the framework of Canadian law and our court system."

Headed by private arbitrators, the tribunals usually operate without public or Media access, although their decisions are reported.

The government says confidentiality is necessary for business competitive reasons and an Ontario court challenge to the secrecy by a coalition of groups in 2001 remains in limbo.

For its part, the federal government argues it was within its rights to negotiate the trade agreement.

But the council and union say the provision amounts to a direct attack on the Canadian justice system, discriminates against citizens who wish to be heard, and violates international law.

"We're complaining about private investors suing Canada for damage awards," said Shrybman. "That's never existed under international law."

Three experts have weighed in to support the constitutional challenge.

The trade provisions "cast a broad shadow over the landscape of domestic policy and law," said Stephen Clarkson, a professor of political science at the University of Toronto.