Public Service Alliance of Canada
Alliance de la Fonction publique du Canada

Submission of the Public Service Alliance of Canada

to the

Senate Standing Committee on National Finance

Regarding Bill C-59
An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures

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The Public Service Alliance of Canada (PSAC) is the largest federal public sector union, representing more than 180,000 people across Canada. While the majority of PSAC members work for the federal government and its agencies, PSAC also represents workers in the private sector, for territorial governments and in the broader public sector, including universities.

The Public Service Alliance of Canada welcomes the opportunity to comment on Bill C-59, *An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures*. Our comments will focus on Part 3, Division 20 – Sick Leave and Disability Programs of the Bill.

Canada's Supreme Court upheld the right to free collective bargaining

The *Canadian Charter of Rights and Freedoms* protects the right to free collective bargaining. Starting with the Health Services case in 2007, the Supreme Court has ruled the *Charter* provides a broad protection for the right to collectively bargain.

Section 2*(d)* of the *Charter* guarantees that workers possess the rights to band together, to collectively present demands to their employers and to engage in a meaningful dialogue with them to achieve their work related goals.

The Health Services decision went further by imposing constitutional obligations on governments in their role as employers.

They must agree to meet with unions and bargain in good faith "in the pursuit of a common goal of peaceful and productive accommodation" and they must not enact legislation that "substantially interferes" with the ability of a union to collectively bargain workplace issues[1].

In recognizing collective bargaining "as the most significant collective activity through which freedom of association is expressed in the labour context," the Court reversed 20 years of Supreme Court decisions excluding collective bargaining from the Charter's protection of freedom of association[2].

In its landmark decision the court concluded: "The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work[3]."

[1] Health Services and Support – Facilities Subsector Bargaining Assn v. British Columbia 2007 SCC 27, para. 90 and para 109.

[2] *Ibid.*, opening summary.

[3] *Ibid.,* para.82.

The right to a meaningful collective bargaining process was subsequently confirmed in a more recent Supreme Court decision in the case of the Mounted Police Association of Ontario v Canada (Attorney General).

"The right to a meaningful process of collective bargaining is therefore a necessary element of the right to collectively pursue workplace goals in a meaningful way (*Health Services, Fraser*). Yet a process of collective bargaining will not be meaningful if it denies employees the power to pursue their goals. As this Court stated in *Health Services*: "One of the fundamental achievements of collective bargaining is to palliate the historical inequality between employers and employees…" (para 84.)." A process that substantially interferes with a meaningful process of collective bargaining by reducing employees' negotiating power is therefore inconsistent with the guarantee of freedom of association enshrined in s. 2*(d)*[4]."

The Supreme Court's most recent decision in *Saskatchewan Federation of Labour* ruled that the right to strike was an indispensable part of collective bargaining.

International human rights and labour laws protect collective bargaining as part of freedom of association. Canada has signed several conventions that protect freedom of association and collective bargaining, They include the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Labour Organization's Convention No. 87 (Concerning Freedom of Association).

International conventions and Supreme Court decisions notwithstanding, the federal government continues to interfere not just in the collective bargaining process with its employees, but with their very rights under s.2*(d)* of the *Charter*.

Bill C-59, *An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures* is just the latest attempt by the current government to deny its employees their constitutional rights.

An earlier budget implementation bill, C-4 (*A Second Act to Implement Certain Provisions of the Budget tabled in Parliament on March 21, 2013 and other measures*) significantly undermined well-established mechanisms to ensure the effective resolution of disputes. With the passage of bill C-4 the government skewed the balance in favour of the employer and the government by limiting the rights of union members and restricting the role of the labour relations boards and adjudicators that have long played a key role in dispute resolution.

Bill C-4 also gave the government the unilateral right to declare employees essential workers and take away their right to strike. There appears to be no limit when it comes

[4] Mounted Police Association of Ontario v Canada (Attorney General) 2015 SCC 1, para. 71.

to this government rewriting the rules in its own favour in order to implement its own agenda. Despite the fact that the Supreme Court has struck down virtually identical legislation from Saskatchewan, the federal government has continued to insist on maintaining its essential services regime while PSAC's legal challenge works its way through the Courts.

Division 20 – Sick Leave and Disability Programs

Division 20 authorizes Treasury Board to modify the sick leave provisions of its collective agreements with federal bargaining agents and unilaterally impose a short and long term disability plan outside of collective agreements.
Modification to the current sick leave regime may include:

(a) the number of hours of sick leave to which an employee is entitled in a fiscal year;
(b) the maximum number of hours of unused sick leave that an employee may carry over from one fiscal year to the next fiscal year; and
(c) the disposition of unused hours of sick leave that stand to an employee's credit immediately before the effective date.

Bill C-59 also gives Treasury Board full control over the design of a new short-term disability plan that would operate outside of our collective agreements.

Finally, despite the terms of the *Public Service Labour Relations Act*, Bill C-59 authorizes the Treasury Board to modify the existing public service long-term disability programs in respect of the period during which employees are not entitled to receive benefits.

Division 20 deliberately circumvents the ongoing negotiation process

Negotiations with Treasury Board began in July, 2014 when PSAC and Treasury Board exchanged their demands. Yet in 2013, over a year before bargaining began, the government had already made clear its intention to eliminate existing collective agreement sick leave provisions.

Treasury Board made it known that the government intended to introduce a short-term disability plan, to replace the current sick leave system. The long-term disability plan would be overhauled and integrated with the new short-term plan and the new system put in place by July, 2016. The contracting process for a provider would begin in 2014 with the expectation of awarding a contract in 2015. All employees, including unionized employees covered by collective agreements, would be affected.

In 2013 the Treasury Board President also started a campaign of misinformation about the use of sick leave in the federal public service in an attempt to sway public opinion in support of the government's position that the current sick leave benefits must go. Using statistics that were later called into question by both Statistics Canada and the

Parliamentary Budget Office, the President was clear about the government's intention to change the current sick leave system.

When Treasury Board communicated directly with its employees about its new "Workplace Wellness and Productivity Strategy", employees were left in no doubt that a new sick leave regime was a *fait accompli*, even before the parties exchanged bargaining demands.

While negotiations were ongoing, the April 2015 federal budget included $900 million in "savings" in the current fiscal year resulting from the government's planned changes to accumulated sick leave in the federal public service; "savings" that will fund most of its projected $1.4 billion surplus in 2015-16.

Now, the government is taking the final step of using their unique power to unilaterally alter collective agreements by removing provisions mentioned in Division 20 from the scope of bargaining.

This offends the Charter rights of our members and all federal public service workers to free collective bargaining. It specifically circumvents the Public Service Labour Relations Act as well as the ongoing bargaining process by pre-determining the outcome of negotiations. It is therefore inconsistent with s.2*(d)* of the Charter that calls for a meaningful process of collective bargaining.

PSAC objects strongly to the inclusion of Division 20 in its entirety. If Bill C-59 is adopted, it will harm the public services our members provide by forcing people to go to work sick and it will cause irreparable damage to labour relations in the federal public sector.

Free collective bargaining works

In this round of negotiations for our five bargaining units with Treasury Board, PSAC is pursuing proposals to improve the health and wellbeing of our members at work. These are proactive proposals that seek to reduce the stress on frontline employees who work in call centres and at government service desks and ensure there are sufficient workers to provide Canadians with the level of service they deserve, to ensure workers have the right to refuse unsafe work, to improve predictability and stability in scheduling shift work, to enhance maternity reassignment provisions, to expand prohibitions against discrimination and to prevent harassment and to take specific measures to improve work-life balance.

Recent growth in Long Term Disability (LTD) claims is directly attributable to an increase in mental health issues arising from poisoned government workplaces. Almost half (48 per cent) of LTD claims are related to mental health issues. Sick leave usage is directly linked to the surge of mental health related LTD claims as members are forced

to draw down their banked sick leave days before they can transition to long-term disability.

Recognizing the importance of addressing this issue, PSAC tabled a proposal in this regard and was able to reach an agreement with Treasury Board to create a joint mental health task force to begin to address the problems and build a healthier work environment for all employees.

The Clerk of the Privy Council and Secretary to the Cabinet Janice Charette in her recent annual report to the Prime Minister noted the need to "focus on building a healthy, respectful and supportive work environment. Mental health challenges are a reality in all parts of society and in all workplaces". She went further and acknowledged the joint mental health initiative: "I am very pleased that the Government announced the creation of a joint task force with the Public Service Alliance of Canada to improve mental health and safety in the workplace[5]." The government may not have announced it but the task force came about through free collective bargaining.

Conclusion

Division 20 of Bill C-59 offends the Charter rights of PSAC members and all federal public service workers to free collective bargaining. It specifically circumvents the Public Service Labour Relations Act as well as the ongoing bargaining process by pre-determining the outcome of negotiations. As a result, it is inconsistent with s.2(d) of the Canadian Charter of Rights and Freedoms which calls for a meaningful process of collective bargaining.

We ask the Committee to amend Bill C-59 by removing Division 20.

[5] Twenty-Second Annual Report to the Prime Minister on the Public Service of Canada, Year ending March 31, 2015, p. 18.