Brief on BILL C-62, An Act to amend the Federal Public Sector Labour Relations Act and other Acts

The Association of Justice Counsel (AJC) is grateful for the opportunity to comment on Bill C-62, An Act to amend the Federal Public Sector Labour Relations Act and Other Acts, which combines previous Bill C-5, An Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1, and Bill C-34, An Act to amend the Public Service Labour Relations Act and other Acts.

We support the proposed Bill, which would reverse the unlawful amendments in Bill C-4 and Bill C-59.

We appeared before the Human Resources, Skills and Social Development and the Status of Persons with Disabilities Committee (HUMA) of the other place on April 25, 2018 in support of the Bill.

We also support amendments proposed to the Bill by the Public Service Alliance of Canada that would ensure it complies with the Charter. These include amending section 9 of Bill C-62 to remove clauses 121(2)(a), 123(6)(a) and 127(6)(a) of the Federal Public Sector Labour Relations Act, which all read as follows, “without regard to the availability of other persons to provide the essential service during a strike.”

OUR MEMBERS SERVE CANADIANS EVERY DAY

The AJC is the bargaining agent for more than 2,600 lawyers employed by the government of Canada, including those who work for the Department of Justice (DOJ) and the Public Prosecution Service of Canada (PPSC). The AJC works collectively to improve the working conditions of members and to raise public awareness of the crucial work our lawyers do for the benefit of all Canadians.

Canada’s public service is one of the most highly respected institutions of its kind in the world. Federal lawyers are no exception and work tirelessly to serve Canadians in countless ways. For example, we draft policy and laws to improve the lives of Canadians; we prosecute criminal offences to keep Canadians safe from terrorism, gangs and human trafficking; and we provide legal services to federal departments, tribunals and courts. We also litigate on behalf of Canada in complex trials and defend against roughly $1.2 trillion dollars in legal claims.

OUR PREVIOUS COMMENTS AND ACTION ON BILL C-4 AND BILL C-59

We were deeply troubled by Bill C-4, and expressed the concern in November 2013 about the sweeping amendments to the Public Service Labour Relations Act and the Public Service Employment Act and how they were unconstitutional. ¹ Once Bill C-4 was passed, we participated in a legal action filed in June 2015 challenging the constitutionality of provisions in Bill C-4 related to essential services and dispute resolution mechanisms. Pending the passing of Bill C-62, we agreed to hold the action in abeyance. We have every reason to believe that it would be allowed by the courts.

¹ See Association of Justice Counsel, Bill C-4 - Economic Action Plan 2013 Act no. 2 – Part 3, Division 5 (Canada Labour Code) and Part 3, Divisions 17 and 18 (Public Service Labour Relations Act) (November 2013), available online [https://ajc-ajj.net/files/library/SG_Draft_HofC_written_submissions_-_FINAL.pdf].
This is because, in our view, the current FPSLRA contains provisions that are a substantial interference with the right of public service employees to bargain collectively, and are unconstitutional. Repealing them is consistent with existing Supreme Court jurisprudence, as well as with Canada’s international obligations. It is also consistent with the Minister of Justice and Attorney General of Canada’s mandate – to ensure our legislation meets the highest standards of equity, fairness and respect for the rule of law.

IMPACT ON PUBLIC SERVICES AND FEDERAL LAWYERS

The current law has a significant impact on the delivery of public services, and forces our members to go on strike. It also exposes the government to the risk of millions of dollars in increased administrative costs, litigation, transaction reversals and extra human resources required to reverse these transactions in a flawed system – Phoenix.

Lawyers are loath to strike because it would disrupt legal work that is important to Canadians, and we are keenly aware of the importance of public trust in the administration of justice. But we must be able to address workplace issues that seriously compromise our health and safety, or our ability to meet professional obligations. Arbitration has consistently been our preferred route to do so. It is an efficient approach to resolving disputes that preserves services to the public and ensures federal workers and their families are treated with dignity, respect and fairness.

There is no doubt that Bill C-4 had a negative impact on labour rights and contributed to the fact that members of the AJC went more than 4 years without a collective agreement. Our agreement is so stale that it comes into force after it expires. The continuing cycle of delay creates additional pressure on the broken Phoenix pay system, is harmful for labour rights and not to mention, on the mental health of our members.

RECOMMENDATIONS

The AJC recognizes this legislation as a good step towards re-establishing a collaborative and respectful relationship with bargaining agents and their members. It will bring important issues back to the bargaining table to be resolved through good faith negotiations. We urge the Senate to pass the legislation as quickly as possible.

However, more work is required to restore and modernize the federal public service labour relations framework. This will assist in attracting young workers and retaining existing ones. For example, the right to refuse dangerous work remains a concern, as is the fact that federal government employees are the only public servants with no minimum employment standards. Finally, our legal framework is weak. The FPSLREB is overworked and under-resourced, and the FPSLRA that it administers does not empower the board to grant effective remedies in many circumstances.

Immediate improvement is required, which should be undertaken in consultation with bargaining agents and other stakeholders – with the goal of improving workplace conditions for employees and services provided to the Canadian public.

ANNEX A: Summary of Relevant Law

The Supreme Court of Canada explicitly recognized that section 2(d) of the Canadian Charter of Rights and Freedoms (Charter), which guarantees of freedom of association, protects a meaningful process of collective bargaining in its 2007 decision, *Health Services & Support Facilities Subsector Bargaining Assn v. British Columbia*. More recently, in its 2015 decision, *Saskatchewan Federation of Labour v. Saskatchewan*, the Supreme Court recognized that section 2(d) of the Charter also protects the right to strike in order to allow for a meaningful process of collective bargaining. The Court struck down Saskatchewan’s essential services legislation, which included similar provisions to those found in Bill C-4.

The right to collective bargaining as part of freedom of association is recognized at international law, including the Freedom of Association and Protection of the Right to Organize Convention, 1947 (No. 87), which was ratified in Canada in 1972. In September 2015, a complaint was submitted to the International Labour Organization (ILO) on behalf of the Canadian Labour Congress (CLC), claiming that the Canadian government had failed to comply with the convention as a result of the enactment of Bill C-59, and requesting that the ILO Committee on Freedom of Association request that the Government of Canada repeal the provisions. 3

ANNEX B: Health and Safety Concerns

As Canada’s largest employer, the federal government has committed to taking a leadership role in improving mental health in the public service. When the Mental Health Joint Task Force released its second report in May, 2016, the President of the Treasury Board stated that, “The Government is committed to restoring a culture of respect for and within the public service. We will continue to work with public sector unions to improve how we address mental health issues in the workplace. The recommendations by the Joint Task Force will contribute to healthier workplaces for federal public servants across Canada.”

The mental health of Canada’s public service has already been damaged as a result of ongoing issues with Phoenix, as well as excessive workloads and overtime. Taking important steps through Bill C-62 to restore stability and ensure a respectful relationship with bargaining agents is an important health and safety issue for our members.

ANNEX C: Impact of Collective Bargaining Delays

Collective bargaining delays have resulted in critical recruitment and retention issues for our junior lawyers. For example, the Department of Justice has lost almost fifty percent of lawyers in entry-level positions in British Columbia in the past two years. This has caused a significant increase in workload and stress for those that remain.

It is worth noting that retention issues have also been amplified for federal prosecutors following the Supreme Court of Canada’s recent decisions in *R. v. Jordan*, 2016 SCC 27 and *R. v. Cody*, 2017 SCC 31 on trial lengths set out strict timelines to ensure the accused are tried within a reasonable time. Our federal prosecutors do not have adequate resources to do their jobs, and things are getting worse. In 2018, the PPSC has an anticipated budget shortfall and has accordingly required most regional offices to cut their operating budgets by 7.5%. We continue to be asked to do more with less, increasing the likelihood of negative impacts on the health and safety of our members, and making the amendments in Bill C-62 more urgent.

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