Submission by the Public Service Alliance of Canada to the Senate Standing Committee on Social Affairs, Science and Technology

Regarding Part 4, Division 15 of Bill C-86, Budget Implementation Act, 2018, No. 2

November 22, 2018
The Public Service Alliance of Canada (PSAC) represents more than 180,000 workers in every province and territory in Canada and in some locations outside Canada. The majority of PSAC members work for federal government departments and agencies and federal Crown Corporations.

PSAC has 177 bargaining units covering 13,000 employees that fall under Part III of the Canada Labour Code (Labour Standards). Where a PSAC collective agreement is silent on a matter addressed by the Code, or where an agreement provides inferior protections or benefits than those set out in the Code, the workers covered by the collective agreement are entitled to the Code protections.

About the Canada Labour Code Part III (Labour Standards)

Part III of the Canada Labour Code was enacted in 1965. It sets minimum employment standards for employees in the federally-regulated private-sector and most federal Crown corporations. Overall, the Code covers 18,500 employers and 900,000 employees (approximately 6% of Canadian workforce), including in:
- interprovincial and international transportation
- chartered banks
- telecommunications and broadcasting
- grain industry
- certain activities undertaken by First Nations.

The amendments of the Code also have indirect bearing on the rights of all PSAC members because the federal labour code has historically set a bar for all jurisdictions.

We also look forward to the government introducing similar minimum employment standards to the federal public service. Contract-flipping, unequal treatment of employees based on employee status, temporary help agencies and misclassification of employees all occur in the federal public service. We believe the federal government should take the same steps to mitigate against these practices as it is correctly imposing on other employers in federally-regulated sectors through the Code amendments.

While the proposed changes to the Code are generally positive, we are commenting on two areas that fall short.

Contract Flipping

Bill C-86 strengthens protections for non-union employees facing contract flipping (s.189). Existing Part III language on transfer of work, undertaking or business is strengthened, and now specifically references retendering of contracts.
In a contract re-tendering, non-unionized workers who are retained by the new employer will be deemed to be continuously employed. This will affect individual termination and severance, work-related illness and injury, unjust dismissal, and various leave provisions including sick leave.

However, a new employer has no obligation to re-hire the employees of its predecessor. There are no successorship obligations beyond the treatment of the new employer as a continuous employer for the purposes of an individual employee’s length of service and subsequent entitlements. The deemed continuous employment will not apply if there is a lapse of 13 weeks between employment with first employer and second employer. As well, if the first employer paid out severance and/or termination pay in lieu of notice, the continuous employment provision does not apply with respect to the second employer.

Unionized workers are not protected at all in a contract re-tendering. Bargaining rights, compensation levels, and terms and conditions of employment for unionized workers in contract re-tendering situations are not protected. Re-employment with the successful (new) bidder in a contract re-tendering is also not guaranteed. Where contracting flipping does occur unionized workers should have the benefit of union successor rights guaranteed under the Code.

In the interim, the compensation levels of pre-board security screeners are protected in Part I of the Code (s. 47.3) and the Minister can designate other workers that enjoy this protection in the Regulations. We will be asking the government to protect unionized federal workers experiencing insecurity due to contract flipping through Regulation.

**Paid Domestic Violence Leave**

Bill C-86 also provides five days of paid leave for victims of family violence, as promised in Budget 2018. While unpaid leave for reasons related to family violence will be available to workers immediately upon hire, workers will only be able to access paid leave after three consecutive months of continuous employment.

This eligibility requirement was added, despite the fact that Bill C-86 eliminates eligibility requirements for a range of leaves including sick leave, maternity and parental leave, leave related to critical illness and leave for parents whose child disappeared or died as a result of a crime. The Bill even eliminates the 30-day continuous eligibility requirement for entitlement to holiday pay for a general holiday.

Workers new to a job may be in a particularly precarious place, particularly financially. As a result, they have more difficulty leaving situations of domestic violence. We see no reason why they should not be able to access the leave before they have completed three months of employment.
Expert Panel Struck to Study Specific Issues

In the days to come, a panel of experts will be named to conduct further study of aspects of labour standards deemed not ready for legislative amendments. These include:

- minimum wage
- the “right to disconnect” (i.e. not answer emails, text messages and phone calls outside of working hours)
- labour standards for workers in non-standard employment
- benefits – access and portability
- collective voice for non-unionized workers

It is unfortunate that the government has chosen to delay introducing a minimum federal wage. The importance of a minimum wage and the impact of minimum wages have been studied extensively before now.

At this time, details of the make-up of the expert panel and its consultation process are not known.

We believe there is a significant role for labour representatives to play, both in the composition of the panel and in providing informed input through a robust consultation process.

Thank you for considering our comments.