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ASSOCIATION OF JUSTICE COUNSEL
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Presentation before the House of Commons Standing Committee on Finance

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Final Draft

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Dear Committee Members,

I want to thank the Committee for providing the Association of Justice Counsel this opportunity.

The AJC is the exclusive bargaining agent for 2,700 federal lawyers. Our members are prosecutors for the Public Prosecution Service of Canada and counsel for the Department of Justice. We also provide legal services to federal agencies and tribunals.

Before becoming a so-called “union boss”, I was a drug prosecutor enforcing the government`s tough on crime priorities, returning to this position at the end of my term with the AJC.

DUE PROCESS

To begin, I would be remiss as the representative of federal lawyers if I didn’t address the issue of due process.

Make no mistake; using massive budgetary Omnibus Bills to significantly alter several long-standing and complex pieces of legislation is an assault on due process.

Bill C-4 contains **many elements that have absolutely nothing to do with budgets or Finances**.

Respectfully, we question how a Bill which is 308 pages long, contains 472 separate clauses, affects at least 29 different pieces of legislation and amends or repeals 70 legislative measures can seriously be considered a true "budget bill" – or seriously considered AT ALL, in light of the time constraints and debate limits imposed on this entire process.

We know that Omnibus budget bills are not new. In 1994, then MP Stephen Harper criticized just such a bill, which was 21-pages and entirely related to budgets as "*so diverse that a single vote on the content would put members in conflict with their own principles*."

The scope and breadth of C-4 negates your ability to even know its full impact.

Further, Division 17 of the Bill brings drastic amendments to the *Public Service Labour Relations Act* - a fundamental piece of legislation that has ensured reliable labour relations for the past 50 years! These amendments have greatly denuded employee protections and powers. I will elaborate upon this point in a moment.

Due process has taken a hit since the Law Commission of Canada was forced to close its doors in 2006. Never more have we needed such an informed and independent voice.

Contrary to past practice, these amendments were crafted without ANY consultation with ANY STAKEHOLDER – not with unions, labour law specialists, academics – no one.

CONSTITUTIONALITY OF BILL C-4

We also question the constitutionality of Bill C-4. Advance consultation would have minimized the vulnerability of these changes to challenges under sections 2(b) and (d) of the *Canadian Charter of Rights and Freedoms.*

Our highest court has confirmed on several occasions that collective bargaining is the fundamental right of every Canadian employee. This right can only be limited minimally, and only in exceptional circumstances.

Note that this Bill bestows upon the Employer the exclusive power to determine who can arbitrate, who can strike and who is "essential". Further, when one is "allowed" to participate in interest arbitration, the Adjudicator's ability to consider relevant factors has been severely

constrained – to the point where it can be argued that the outcome is already determined.

Unfortunately, Bill C-4 contravenes several of our international obligations. Specifically, the International Labour Organization has consistently recognized that the right of employees to strike is an intrinsic part of the right to organize.

COSTS IMPLICATIONS

Now, let me address the issue of costs, the lens under which you are all tasked to look through.

For a government that constantly trumpets its desire to streamline operations and save money, Bill C-4 will have the opposite effect.

- **changes to the PSLRA will mean that interest arbitration will no longer be available to some**

Forcing federal workers to strike rather than go the interest arbitration route will affect the services Canadians receive and serve to frustrate labour relations even further. We need only remember the Quebec prosecutors and civil lawyers who were recently forced into this exact situation. The latter had the right to strike forced upon them in 2003 by

the Charest government as a way to avoid binding arbitration. It culminated in strike action by almost 1500 Quebec government lawyers

in February, 2011. This situation broke the bond of trust between these lawyers and the government, and jeopardized many serious criminal prosecutions.

On a completely practical level, how can the government save money by forcing its employees to strike! You might think, 'Isn't she contradicting herself?' I just referenced the importance of preserving the right to strike. The point is, C-4 WILL FORCE some of us to strike, as it's the ONLY option. **This approach is neither fair nor is it economical.**

Arbitration has consistently been the preferred route for the AJC and for most Public Sector unions. This civilized approach to labour disputes preserves services to the public and ensures federal workers and their families are treated with respect, dignity and fairness.

- **The amendments will also overcomplicate the grievance process**

The Bill removes the adjudicator's authority to grant a remedy pursuant to a policy grievance that has retroactive effect. Bargaining agents will be forced to file multiple individual and group grievances in order to preserve members' remedial rights. Duplicated and multiple processes will not save money for taxpayers.

- **C-4 allows the Chairperson of the Labour Relations Board to review a decision of the adjudicator.**

This adds an extra layer of administration and extra costs. It will lead to more litigation as it opens the door to serious questions of bias, political interference, procedural fairness and natural justice should a decision be reversed. Again, no savings and no streamlining here!

CONCLUSION

Modernization? Hardly. This Bill takes labour relations back decades. From a cost analysis perspective, it is difficult to see how this scheme can in any way lighten the load for Canadian taxpayers.

This Bill is a costly and ill-conceived solution, looking for a problem.

Thank you.