

Bill that aims to uncover public servants' political history has 'feel of a witch hunt'

KATHRYN MAY, OTTAWA CITIZEN, MARCH 6, 2014

OTTAWA – The union representing lawyers working for Canada's parliamentary watchdogs say a Conservative MP's bill to compel employees in those agencies to disclose their past political activities will politicize the public service and risks "witch hunts" for partisan bureaucrats.

→ Lisa Blais, president of the Association of Justice Counsel, said the union has nearly 40 members working for the agents of Parliament who are targeted by Conservative MP Mark Adler's private member's bill. The bill would force employees to make a public declaration of their political activities going back a decade. If passed, the legislation would extend to current employees to disclose their political pasts.

It would also allow any MP or senator to demand an investigation into any concerns about an employee's "partisan" conduct or behaviour.

"What is this government trying to achieve? This is overkill," said Blais. "It is not only concerning because it has all the feel of a witch hunt but it is completely unnecessary. It also makes the public falsely assume there is a huge problem here when there is not."

Blais said the bill is unfair and "redundant" because the public service is already governed by an "elaborate regime" of statutes, codes and processes to safeguard the political neutrality of Canada's public service. She said the bill flies in the face of hiring rules based solely on the merit and competence of candidates for the job.

A meritorious and non-partisan public service has been the cornerstone of Canada's bureaucracy and the Westminster parliamentary system for more than a century. This means anyone applying for a job must be assessed only on their competence and qualifications. They cannot be asked about any political activities.

Once hired, however, they must follow the provisions of the Public Service Employment Act (PSEA) and the values and ethics code, which regulate and govern political activity. Under existing law, public servants can engage in political activities as long as these don't affect or seem to affect their ability to do their work in a "politically impartial manner."

Employees working for most of the agents of Parliament are covered by the PSEA, and Adler's bill would turn this principle on its ear because all applicants and successful candidates would have to disclose any past political affiliations. Blais said this would have a "chilling effect" that could make it difficult to recruit people to work for the parliamentary watchdogs or the broader public service.

"So right off the top, you are disclosing your political leanings and past actions. No matter how well-meaning you were in exercising your democratic right, you are given a scarlet letter in the competition process," said Blais.

The Public Service Commission, the public service's merit watchdog, refused to discuss the bill and potential implications for public servants but posted a statement on its website outlining concerns.

"For more than 100 years, a non-partisan public service has been ensured by the merit-based appointment system," said the statement. "The federal public service benefits from a workforce hired on merit, comprised of engaged citizens with a wide range of backgrounds and experience and who, once appointed, must perform their duties in a politically impartial manner."

The commission argues that forcing employees to disclose their political pasts is "at odds" with existing legislation and suggests it will be used in the selection process.

"The fact that we do not ask for information on political affiliation is, the commission believes, essential in ensuring confidence on the part of the public and applicants in the impartiality and fairness of the merit-based system."

David Zussman, a former PSC commissioner, said there have been few instances of improper political activity among public servants over the years. However, he argues that the bill, if passed, would face a constitutional challenge. The courts have been clear since the Osborne decision in 1991, which established that public servants have political rights and can engage in some activities.

Ralph Heintzman, a research professor at the University of Ottawa who headed Treasury Board's first values and ethics office, said the bill is a blatant partisan manoeuvre aimed at leaving Canadians the impression that some of these officers have been partisan while in office.

"This bill is a pre-emptive partisan strike against any criticism of the government by officers of Parliament, including criticism of the government's own partisan excesses, as in its alleged election offences, he said.

Canada's parliamentary watchdogs include:

- Auditor General of Canada
- Chief Electoral Officer
- Official Languages Commissioner
- Privacy Commissioner
- Information Commissioner
- Senate Ethics Officer
- Conflict of Interest and Ethics Commissioner
- Lobbying Commissioner
- Public Sector Integrity Commissioner