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ASSOCIATION OF JUSTICE COUNSEL
ASSOCIATION DES JURISTES DE JUSTICE

Surprises, Traps and Attacks in Bill C-4

By carefully reading Bill C-4, the omnibus budget implementation bill, many surprises jump off the page.

Here are a few 'vignettes' capturing some of those surprises the AJC found (or, if you will, traps set up by the Harper Government to weaken federal workers and gut public sector unions).

We have gathered together, in one document, the 10 vignettes that were published in November and December 2013 by the AJC.

Vignette 1

Under C-4, Political Influence and Fraud in the Appointment Process Appear to Be Acceptable

If Bill C-4 is passed, the government will disallow the pursuit of complaints by unsuccessful candidates wishing to challenge an internal job appointment process in relation to competitive processes on the basis of an abuse of authority if such abuses involve allegations of fraud or political influence.

More specifically, section 351 of the proposed bill which purports to replace section 77(3) states: "The Tribunal may not consider an allegation that fraud occurred in an appointment process or that an appointment or proposed appointment was not free from political influence." Taking the high road has a whole new different meaning now when unsuccessful candidates lose their right to expose corruption in the appointment process.

Vignette 2

C-4 Contravenes Canada's International Obligations

The International Labour Organization's *Declaration on Fundamental Principles and Rights at Work* has long recognized the importance of governments' role in providing for an enabling and conducive environment in labour relations. As the organisation clearly states in its fundamental principles, "[a] legislative framework providing the necessary protections and guarantees, institutions to facilitate collective bargaining and address possible conflicts, efficient labour administrations and, very importantly, strong and effective workers' and employers' organizations, are the main elements of such an environment."

Unfortunately, Bill C-4 contravenes several of our international obligations by severely curtailing the public service's right to collectively bargain.

Under the current legislative scheme, the designation of essential services is based on consultations carried out in a climate of collaboration where the main goal of both the Unions and the Employer is to ensure the delivery of essential services necessary to maintain the safety and security of the public. According to section 122 of the PSLRA, " […] the employer and the bargaining agent must make every reasonable effort to enter into an essential services agreement[…]" In the unlikely event that both parties were to disagree, the Public Service Labour Relations Board would be called upon to act as an independent third party and arbitrate the dispute. If this Bill becomes law, the government will have the exclusive right to determine whether any service, facility or activity of the Government of Canada is considered an essential service at any time with little to no constraint. By doing so, the employer effectively gains the power to debilitate any bargaining unit, limit the impact of a possible strike and thus restrain the unions and their members' right to collectively select how to bargain.

Vignette 3

C-4 Will force More Federal Employees to Take Job Action

If passed, Bill C-4 will have a significant impact on the majority of unionized employees. Under the new legislative scheme, if 79% or less of the positions within a bargaining unit are considered essential, arbitration will not be available unless both parties agree.

Workers who find themselves among this group may be forced to take job action or strike even though their preferred course involves dialogue and the arbitration process.

Vignette 4

C-4 Will Overcomplicate the Grievance Process

Under the current *PSLRA*, the AJC can file a policy grievance with Treasury Board and request a remedy that will have retroactive effect and which will benefit the whole of the membership. Under the proposed amendments introduced by Bill C-4, the government has removed the adjudicator's authority to grant a remedy in response to a policy grievance that has retroactive effect despite the fact that the actions taken by the employer or departments may have been in violation of the collective agreement.

As a result, the government has overcomplicated the grievance process forcing bargaining agents to file multiple grievances.

More specifically, in order to protect the rights of its members, bargaining agents will be required to file:

- a policy grievance with Treasury Board for a decision in relation to the interpretation and application of the collective agreement as only Treasury Board has this exclusive employer right under the *Financial Administration Act*; and
- several individual or group grievances with each of the departments involved in order to secure and ensure that an adjudicator can in the case of a violation to the collective agreement, award a remedy with retroactive effect. Those who do not sign such individual or group grievances will not reap the benefits of any potential settlement or arbitral ruling.

This duplicated and multiple processes will increase the costs relating to a dispute resolution. Why this unnecessary waste of Canadians money?

Vignette 5

C-4 Will Take away the Independence of the Public Service Labour Relations Board, Letting the Government Use it as a Political Tool

If Bill C-4 is passed, the government will have effectively politicized the role of the Chairperson of the Public Service Labour Relations Board by granting the Chairperson the authority to review decisions of adjudicators on request of Treasury Board in lieu of letting the parties accede to the judicial review process, a legal doctrine protected by the Federal Courts Act which preserves access to justice and ensures no undue interference by the executive and legislative branch of government.

While the proposed bill actually states that either party can request that the Chairperson review an adjudicator´s decision, this is in our view a ruse. The AJC has no interest in accessing a process that would have the effect of eliminating our judicial review rights.

By allowing the Chairperson to interfere with a duly appointed adjudicator´s decision, the Chairperson would be seen as interfering and influencing the outcome of cases that he or she has not effectively heard.

This is simply undemocratic and a flagrant abuse of the rule of law, principles of natural justice and due process! Certainly not a question of streamlining the process, Mr. Clement.

Vignette 6

C-4 Will Give the Government The Sole Power to Determine What is an Essential Service

If Bill C-4 receives royal assent, binding arbitration, will only be available for bargaining units in which 80 % or more of their membership have been designated as an essential service. Unions and their members will have therefore lost their right to self-determination with respect to their preferred bargaining options, i.e. arbitration or conciliation-strike.

Vignette 7

C-4 Will Dump More Costs of Adjudication on Federal Employees

Bill C-4 seeks to penalize bargaining agents financially by having them assume 50% of the costs relating to the grievance adjudication process even in the most legitimate of cases that bargaining agents are successful in their claims of wrongful termination or collective agreement violations.

Currently, the Public Service Labour Relations Board (PSLRB) has discretion on whether costs should be imposed. We see no reason why the PSLRB's current discretion to impose costs as it considers appropriate should be eliminated.

Vignette 8

C-4 Will Give the Government the Power to Dictate the Outcome of Negotiations

If passed, Bill C-4 will significantly alter the binding arbitration process. Under the new legislation, the Public Service Labour Relations Board (PSLRB) will be required to take into consideration Canada´s fiscal circumstances in relations to the government´s stated budgetary policies.

As a result, through this mechanism, the government will essentially be able to dictate, or at the very least influence greatly, the outcome of the next round of collective bargaining through a budget or policies specifically designed to curb or restrict any form of reasonable settlement with public servants.

In addition, all language relating to maintaining the balance between different groups or the necessity of offering reasonable compensation or working conditions have been gutted from the *Public Service Labour Relations Act (PSLRA).* This removal will undoubtedly have a 'levelling down effect' with regards to compensation not only between the private and public sector but between different groups amongst the public service.

Vignette 9

C-4 Attacks Employees' Health and Safety

- The new definition of danger will mean that the employee´s right to refuse dangerous work will be diminished except in cases where such danger is considered imminent or a serious threat to health or life;
- An inspectorate of autonomous neutral trained professional health and safety officers will be replaced with political appointees who the Minister deems to be qualified;
- Health and safety will be politicized as a result of the transferred authority and powers of health and safety officers to the Minister of Labour;
- The Minister would not be a compellable witness in a civil suit related to health and safety in the workplace.