CAPE will be publishing different documents regarding the impact of the *Budget Implementation Act* – Bill C-4. We encourage you to share these documents with your members.

Bill C-4

A summary of various issues with Bill C-4:

- Changes to the Canada Labour Code – changing the definition of danger
- Changes to collective bargaining:
  - Positions designated as essential
  - The compensation analysis and research functions
  - The choice of dispute resolution process
- Changes to the grievance process
- Changes to the *Canadian Human Rights Act*
- Changes to the *Public Service Employment Act*
- Merger of the PSLRB and of the Public Service Staffing Tribunal

Status of the Bill

- First Reading in the House on October 22. A time allocation motion was passed on October 24, limiting second reading debate to five days. On October 29, the Bill was sent to different Committees.

- *A second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 21, 2013 and other measures*.

- Amendments to various laws, including the *Canada Labour Code* (*CLC*), the *Public Service Labour Relations Act* (the *PSLRA)*, the *Public Service Employment Act* and the *Canadian Human Rights Act*; in regards to labour relations in the federal public service (Sections 176 to 202, and Sections 294 to 466), the principal changes that are proposed are to the collective bargaining regime, to the grievance process, to the reorganization of the PSLRB and the Public Service Staffing Tribunal and to the definition of danger in the *CLC*.

Issues

- Canada Labour Code

- The definition of “danger” in Section 122.1 would be pared: the new definition would take away important details regarding the nature of what is a danger, which in turn would allow employers to expose the health and wellbeing of Canadians to what are now considered dangerous working conditions.
- For all intents and purposes, the authority and powers of health and safety officers would be removed from the Code. Their authority and powers would be transferred to the Minister of Labour, which will result in a politicization of health and safety.
- Under a proposed new Section 129(1), the Minister of Labour (or person to whom the Minister’s authority is delegated under Part II of the Code) would have the authority to determine that a refusal to work, which has been investigated, is in regards to a trivial matter, or that it is frivolous, or vexatious or done in bad faith by the employee. Further to such a determination, the Minister could determine that there would be no further investigation of the matter and that the employee loses his or her right of refusal to work on the matter.
- The Minister would not be subject to providing testimony in a civil suit by a Canadian citizen in regards to a health and safety matter.

o PSLRA

- Collective Bargaining
    - Positions designated as essential for the service of Canadians
        - They would no longer be identified by means of a negotiated process involving employer and bargaining agent. The employer would have sole discretion over the identification of designated positions (the type of work and the number of positions).
        - A new process would be established in order to provide notice to a bargaining agent of positions that are considered by the employer for designation. After a 60-day period of consultation with the bargaining agent, the employer would inform the bargaining agent of its final decision. If the bargaining agent were to disagree, it could no longer refer the matter to a third party, the PSLRB. The employer’s decision in all cases of designation would be final.
        - Furthermore, at any time after its decision, the employer could modify its list of designated positions. For example, in the middle of

a strike, the employer would now be able to add to its list of designated positions. Thus, the employer would no longer need to go through the process of passing special back to work legislation in the House of Commons, as it could force back to work by means of new designations individual striking employees until the strike effort became for all intents and purposes ineffective. This device would allow the government a free pass to break strikes without being required to initiate a public debate of the matter in the House of Commons.

- Members of a bargaining unit who are encumbering designated positions would no longer be allowed the right to refuse overtime work, call-back to work during personal hours or being on call. This would allow the employer to have designated employees do the work of striking employees.

- The compensation analysis and research functions
  - The CARS of the PSLRB would no longer exist. This function had been created only ten years ago in order to create a more collaborative atmosphere at the bargaining table by providing research results that would be shared by the parties.
- The choice of dispute resolution process
  - It will no longer exist for collective bargaining in the Public Service.
  - The dispute resolution process would be conciliation/strike, increasing the risk of work interruptions as a result of failed negotiations.
  - Arbitration, which allows the resolution of impasses at the bargaining table to be resolved without interruption of services to the Canadian public, would for all intents and purposes no longer be used.
  - There would be two very exceptional circumstances where there could be arbitration:
    - If the employer designates 80% of the bargaining unit (keeping in mind that the employer decides unilaterally the numbers), then arbitration would be the dispute resolution process;

- If the bargaining agent and employer were to agree to arbitration in writing, then the dispute resolution process could be arbitration (unlikely where a bargaining agent has a reputation of successfully putting forth its case before tribunals).

- The notice to bargain period which went from 3 months to 4 months in 2003, would now be 12 months (except during the transition period when it would continue to be 4 months).

- Arbitration Boards and Public Interest Commissions (PICs are for the conciliation process) would have an order of factors to consider, and new factors to consider for awards or reports.

    - Whereas in the past, all factors were to be considered equally; now consideration of two factors would be required: (1) recruitment and retention; and (2) “Canada’s fiscal circumstances relative to its budgetary policy.” The reference to budgetary policy is particularly odious as we have witnesses in recent years how policy can be subsumed under partisan politics.

    - The other factors that already exist in the PSLRA would remain but the requirement would be to consider them only if directly relevant (e.g. internal consistency in the application of compensation and comparability with the private sector).

    - Furthermore, the section is prefaced with more constraining language: board decisions or PIC recommendations would need to translate into a “prudent use of public funds” and need only “allow the employer to meet its operational needs.”

    - Boards and PICs would be required to set out the reasons for its decisions.

    - Finally, Boards and PIC would be required to use a total compensation approach in coming to their decisions or recommendations. The definition of total compensation in the Act does not include several elements of compensation found in the private sector (e.g. stock options).

    - Henceforth, the Chairperson of the PSLRB would have the authority to compel an arbitration board or a PIC to review their

decisions or recommendations if so requested by one of the parties or if the Chairperson alone felt that the board or PIC did not consider appropriately the factors in the PSLRA. It could as in the past ask a PIC to reconsider or amplify its report.

- The Grievance Process
  - Public service employees would no longer be allowed to file complaints to the CHRC. PS employees would be required to address matters of discrimination by filing discrimination grievances which if they survive the process could be heard by the PSLRB.
  - All grievances filed by individual employees would now require the approval of and representation by the bargaining agent, except discrimination grievances.
  - The employer could dismiss a grievance at any step of the process if the employer found the grievance trivial, vexatious and frivolous or in bad faith.
  - Policy grievances would be prohibited on matters that can be grieved by individuals. This would mean in practice that there will be no more policy grievances, since individuals covered by a collective agreement can grieve everything in the agreement.
  - There would be no more retroactive action on policy grievances that are found against the employer. Therefore, there would be no consequences except for a declaration by the Board.
  - The list of reliefs for founded grievances of discrimination would be expanded to include all types of relief found under Section 53(2) and 53(3) with the exception of 53(2)(a) which is typically used to address questions of systemic discrimination (See Appendix A).
  - The cost of adjudication would be born equally by employer and bargaining agent. The Chairperson of the PSLRB would determine alone the cost.
  - An adjudicator could dismiss a grievance that he or she deemed frivolous or vexatious.

- Canadian Human Rights Act
    - The Canadian Human Rights Commission would be explicitly prohibited from hearing complaints, pursuant to Sections 7, 8, 10 and 14 of the CHRA, from federal Public Service employees.
- Public Service Employment Act
    - SERLOs would be applied only to groups of a same occupation and same level.
    - Unsuccessful candidates in an advertised internal selection process who have not satisfied the employer that they meet the essential qualifications could only challenge the decision that they do not meet the qualifications (abuse of authority). They could not challenge other abuses of the process.
    - The Tribunal would have the power to summarily dismiss a complaint that fails on procedural grounds, and complaints where Deputy Heads have taken action that the Tribunal considers appropriate.
- Merger of the PSLRB and of the Public Service Staffing Tribunal
    - The Public Service Labour Relations Board and the Public Service Staffing Tribunal would be replaced with the Public Service Labour Relations and Employment Board. A new Act would be used to create the new entity: the Public Service Labour Relations and Employment Act.
    - The PSE Act would be amended to provide the new PSLRB with the power to search and enter work places and require all employees to answer questions in regards to a complaint.