BILL C-59 – AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON APRIL 21, 2015 AND OTHER MEASURES.

BRIEF SUBMITTED TO THE HOUSE OF COMMONS'
STANDING COMMITTEE ON FINANCE

A Canadian Association of Professional Employees Brief on Bill C-59,
An act to implement certain provisions of the Budget
tabled in Parliament On April 21, 2015 and other measures

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ACEP
Association canadienne des employés professionnels

CAPE
Canadian Association of Professional Employees

Contact information:

Pierre Lebel
plebel@acep-cape.ca
613 236-9181

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Introduction

This brief, prepared by the Canadian Association of Professional Employees (CAPE), sets out a number of concerns that federal public service employees have about some of the provisions of Bill C-59. In CAPE's estimation, the legislative changes affecting the current round of collective bargaining violate the "freedom of association" in s. 2(d) of the *Canadian Charter of Rights and Freedoms* ("*Charter*") as confirmed by the recent trilogy of Supreme Court of Canada decisions regarding labour rights and provide an unfair advantage to the employer by completely "tilting" the bargaining process in its favour mid-stream. Moreover, CAPE believes the government is confusing basic economic concepts and has little regard for the well-being of the vast majority of its employees who will be penalized by its new sick leave and short-term disability regime. Lastly, the government has failed to demonstrate how this could possibly result in savings for taxpayers.

1. Bill C-59 gives the employer an unfair advantage in the bargaining process

The provisions of Division 20 of Part 3 of the Bill tip the scales even further at the bargaining table by giving the employer an unfair advantage over the other party. This bill removes freedom of choice from the bargaining process. Bargaining outcomes can thus be expected to favour the employer and be unfair to our members, notwithstanding our efforts to reach an agreement in good faith.

2. The employer wishes to impose certain terms and conditions of employment heretofore subject to collective bargaining

In the past, federal public service unions have had to contend with legislation imposing specific terms and conditions of employment, limiting wage increases or forcing employees back to work. In each case, the government of the day defended its actions by arguing that it was protecting the Canadian public or the Canadian economy.

Starting with the passage of Bill C-4, which amended the *Public Service Labour Relations Act* (PSLRA) to provide the government with undue leverage in the collective bargaining process, the government's efforts to undermine the collective bargaining rights of federal public service workers as well as their right to strike grew to an unprecedented level with the provisions contained in Division 20 of Part 3 of

Bill C-59. Not content with having slanted the bargaining process in its favour with Bill C-4, the government now wants to exclude from collective bargaining certain issues over which it intends to impose its views. Hence, the Bill specifically "authorizes Treasury Board to establish and modify, **despite** [emphasis added] the *Public Service Labour Relations Act*, terms and conditions of employment related to:"

- sick leave;
- a short-term disability program; and
- the existing long-term disability program, in respect of the period during which employees are not entitled to receive benefits.

C-59 would therefore bar public service workers, "despite the PSLRA," from engaging in free and meaningful collective bargaining over three specific issues. In light of the recent Supreme Court of Canada decision in *Saskatchewan Federation of Labour v. Saskatchewan*, we believe that these changes brought about by C-59 are illegal because they interfere with a meaningful process of collective bargaining. Indeed, the Court indicated in its decision that if the government wishes to limit certain rights in this context, it must in return offer affected employees access to meaningful dispute resolution mechanisms.

C-4 has already altered the collective bargaining process for our members by taking away their right to arbitration, pushing them inexorably toward the conciliation/strike route. With Bill C-59, the government now intends to make it impossible for members to exercise this legitimate right in respect of issues which they consider to be of vital importance, namely sick leave and short-term disability.

We believe that these changes are unconstitutional and contrary to the freedom of association under the *Charter*. They deny Canadians employed by the federal public service rights that are protected by the Constitution and the *Charter*.

3. The government is confusing the economic concepts of savings and liabilities, and it is glossing over the cost of its new sick leave and short-term disability plan

We feel it is important to remind this committee that the premises underlying the government's removal of rights from federal public service workers are false. The Treasury Board President is always quick to claim that his plan is equitable for public service employees and fair for Canadian taxpayers. To back up those claims, the government is asserting incorrectly that it can generate "savings" from what amounts to an unfunded liability on its books; it is also failing to take into account system costs.

We believe that a move away from the existing sick leave and short-term disability regime to something similar to Treasury Board's current proposal at the bargaining table would not be fair for employees because it would put the majority of them in the position of having to choose between going to work sick or staying at home sick without pay.

Let's consider a hypothetical case. Mary is a statistician employed by Statistics Canada. She has three children and has accumulated 15 years of experience in the federal public service. If she falls sick today, she can use one of her annual 15 days of sick leave; she will receive her full salary for the day, and she will have the peace of mind of knowing that she can stay home to take care of herself.

Under the new system currently proposed by the government, however, Mary could have some difficult choices to make if she becomes ill. When Mary contracts an infection from her youngest child and has to take six days off work at the start of the year, she will have used up her entire six-day annual allotment of sick leave under the government's proposed plan. Two months after returning to work, she catches a bad cold from one of her children. For the next five days she can either stay home without pay and treat her illness, as recommended by her physician, or come to work sick because she cannot afford the luxury of staying home without pay until she gets better.

The Treasury Board President will tell you that many young public service workers are not adequately protected under the existing plan. To address this issue and improve the situation faced by the very small percentage of employees who avail themselves of disability benefits (about 3,000 per year, according to Treasury Board's annual reports), he will be taking steps to ensure that 45% of the employees covered by the existing plan (i.e., 85,000 workers) are without pay after they take six days of sick leave. Clearly this is not very equitable.

Based on historical leave patterns, how many employees would be able to make use of the STDP in a given year (2013-2014 numbers)

Employees	**Number**		**%**
Used fewer than 6 days of sick leave in 2013-2014, and so would have no need of STDP benefits	80,620		42
Employees who used over 6 days of sick leave in 2013-2014. Of this group:	111,288		58
1- Would have been 100% covered against illness under the proposed plan		1,717	1
2- Would have been eligible for some STDP benefits, but would not have 100% of their needs covered by the STDP		24,109	13
3- Would not have received any benefits under the STDP		85,462	45%
TOTAL	191,908		100

Taxpayers, meanwhile, are being asked to believe a government-authored fairy tale to the effect that the new sick leave and short-term disability plan could generate savings of as much as $900 million. The government is confusing “savings” and “liabilities.” This $900 million figure is not a projected expenditure; rather, it represents the “book value” of accrued sick leave. Savings cannot be realized out of non-expenditures. Moreover, while this government seems to have given up on evidence-based policy-making, the Parliamentary Budget Officer has concluded on the basis of a stringent analysis that the existing system costs very little because the vast majority of employees on sick leave are not replaced during their absence from work.

While it can’t seem to distinguish between savings and liabilities, the government is either unwilling or unable to understand that the implementation of its proposed new short-term disability system will generate real costs – a detail which it conveniently omitted to mention in its budget. We now know that these costs may never be revealed to the Canadian public, since the government believes this information should be deemed confidential. Quite apart from the hidden costs, moreover, the new system will engender an unprecedented transfer of responsibility from public service managers to private company employees. The individuals currently responsible for directing personnel in every aspect of their work, including the management of disability benefits, will be replaced in this role by the staff of a private company for whom the welfare of workers – which the Treasury Board President

claims to care so much about – will be a secondary consideration in relation to the profits the company hopes to make by administering this plan.

Recommendations

We recommend that Division 20 of Part 3 of Bill C-59 not be passed because it contravenes s. 2(d) of the *Charter*, in which the right to free collective bargaining is enshrined; because it gives the employer an unfair advantage at the bargaining table; and because it is based on fictitious savings and does not take into account system costs.

Conclusion

The House of Commons stands guard over the rights and freedoms of all Canadians. Federal public service employees are Canadians and thus should enjoy the same rights as all other Canadians.

Bill C-59 is an illegal and unconstitutional attack on those rights. Under the pretext of modernizing a benefit plan that, albeit imperfect, provides adequate protection for the vast majority of employees, the government is changing the rules of the game and excluding from free collective bargaining certain issues for which it has already defined the parameters. A court challenge will automatically be launched if these provisions are passed, and the most recent case law indicates that such a legal action will in all likelihood succeed. This would again make it abundantly clear that, when it comes to choosing between the rights of Canadians and the objectives of its political agenda, the present government will always prefer its agenda and will refuse to yield unless it is reminded by the courts that not even the government is above the fundamental laws of the land.

About the Canadian Association of Professional Employees

CAPE represents approximately 12,500 federal public service workers, including 11,500 economists and social science services employees, 925 translators, interpreters and terminologists, and 90 analysts and research assistants at the Library of Parliament.