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Changing the Rules: Reforms to the Public Service Labour Relations Act
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On October 22, 2013, the Government of Canada introduced Bill C-4, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 21, 2013 and Other Measures*, for first reading. As with any Bill still before Parliament, changes will doubtlessly occur before the final Bill is eventually enacted. Nonetheless, given that the governing Conservative Party does have a majority and the Bill reflects the policy of the Government, it is useful to critically examine the changes that are potentially going to become law.

Bill C-4 is a massive omnibus budget bill containing reforms and amendments to many existing pieces of legislation, including the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the "*PSLRA*").

The Bill C-4 amendments to the *PSLRA* will exenterate many of the labour rights that public service employees are entitled to under the current legislation. Sweeping reforms to the definition of "essential services", the mandate of the Public Service Labour Relations Board (the "Board"), the right to strike of public servants[1], and the financial nature of arbitral and conciliation awards that the Board may grant, among other things, will effectively neuter the bargaining rights of affected members of the public sector.

The opening volley on bargaining rights is a subtle change to the mandate of the Board under s. 13 of the *PSLRA*. Where previously the Board was mandated to provide "adjudication services, mediation services and compensation analysis and research services" in accordance with the *PSLRA*, the amendments in s. 295 of Bill C-4 have dispensed with the "compensation analysis and research services" powers of the Board, meaning that the Board is now constrained to solely providing adjudication and mediation services. This change foreshadows amendments discussed below that will dramatically modify the Board's powers with respect to arbitral and conciliation awards.

The amendments to the *PSLRA* redefine what are "essential services" under the *PSLRA* as being "a service, facility or activity of the Government of Canada that has been determined under subsection 119(1) to be essential". Under the old language of Division 8 of the *PSLRA*, the employer only had the exclusive right to determine the *level* at which an essential service was to be provided. The employer and employees had to cooperate to determine which employees were affected, and to then enter into an "essential services agreement." A failure to agree would result in intervention by the Board.

The new language under s. 305 of Bill C-4 will give employers the exclusive right to determine not only whether a service (new s. 119 of the *PSLRA*), facility or activity is essential "because it is or will be necessary for the safety or security of the public ...", but also "the exclusive right to designate the positions in a bargaining unit that include duties that, in whole or in part, are or will be necessary for the employer to provide essential services, and the employer may exercise that right at any time" (new s. 120 of the *PSLRA*).

These changes will most certainly reduce the ability of federal public servants to strike. Bill C-4 amends the process for dispute resolution under the *PSLRA* to provide that bargaining units in which eighty percent (80%)

[1] As defined in Schedules I, IV and V of the *Financial Administration Act*, R.S.C. 1985, c. F-11.

or more of the employees have been designated as essential, may not strike and must resolve their disputes through arbitration (new s. 104 of the *PSLRA*). Furthermore, Bill C-4 has bolstered s. 194(2) of the *PSLRA* prohibiting an employee organization (e.g: a union) from declaring or authorizing a strike, the effect of which would be to involve the participation of employees who are designated as essential by the employer. Furthermore, no officer or representative of an employee organization shall counsel or procure the declaration or authorization of a strike in respect of an essential bargaining unit, or the participation of those employees in a strike. Given that an employer will be able to designate employees to be essential *at any time*, this may well make it significantly more difficult for employee organizations to secure strike votes in the future.

After having restricted the ability of employee organizations to engage in concerted labour action, the amendments, in addition, will re-write the rules with respect to arbitrations and conciliations before the Board. Where before, under s. 148 of the *PSLRA*, the Board had a broad spectrum of factors to consider in making an arbitral award, and the ability to consider any other factors it considered relevant, the new amendments have stripped the Board of those broad powers. The considerations now take the form of "preponderant factors" and "other factors"; the former of which contains new elements, including consideration of whether the compensation levels are a "prudent use of public funds" and "Canada's fiscal circumstances *relative to its stated budgetary policies*", while the latter is a category to which many of the former considerations (under the current *PSLRA*) have been relegated. Similar amendments have been made to the conciliation provisions set out in the new s. 175 of the *PSLRA*.

As if these amendments weren't enough, Bill C-4, if passed, will enable the Chairperson, either on his own fiat or on the application of either of the parties to the Chairperson, to direct the Board to review the matter if, in the Chairperson's opinion, the decision does not represent a *reasonable application* of the s. 148 factors highlighted above. This new mechanism can effectively force the Board to reconsider decisions that it could have made, without internal review, under the current *PSLRA*, where it has considered the s. 148 factors, but failed to do so in a "reasonable" manner.

Bill C-4 will no doubt have an impact on federal public servants. Although the *PSLRA* may not have been a perfect piece of legislation with respect to the collective bargaining rights of federal public servants, it did afford some reasonable protections. The amendments incorporated within Bill C-4 have definitely watered-down employee powers and protections; and in the process, many of those powers rights and protections have effectively been denuded.

The Government of Canada has not yet passed Bill C-4 into law, but it is clear that the rules are changing. Whether you are a federal public service employer or federal public servant, Bill C-4, as it is currently drafted, will have a dramatic impact on your operations or employment. It will be important to stay abreast of the developments in this area. Please contact us if you have any questions on how this might affect you.

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