Complaint Submitted to the International Labour Organization

By the Canadian Labour Congress and Public Service International

on behalf of the National Joint Council Bargaining Agents

With Respect to the Failure of the Government of Canada to Ensure

Conformity with International Labour Organization Convention 87,

Convention concerning Freedom of Association and Protection of the

Right to Organise, 1947 as a result of the enactment by Canada of Bill C-59

September 9, 2015

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COMPLAINT TO THE
COMMITTEE ON FREEDOM OF ASSOCIATION
OF THE INTERNATIONAL LABOUR ORGANIZATION
BY THE CANADIAN LABOUR CONGRESS AND PUBLIC SERVICES INTERNATIONAL
ON BEHALF OF THE NATIONAL JOINT COUNCIL BARGAINING AGENTS
WITH RESPECT TO ACTIONS BY THE GOVERNMENT OF CANADA
WITH RESPECT TO THE *ECONOMIC ACTION PLAN 2015 ACT, No. 1.*

I. INTRODUCTION

1. This complaint is brought by the Canadian Labour Congress and Public Services International on behalf of the National Joint Council (the "NJC") Bargaining Agents (the "complainants"), a council of eighteen bargaining agents from a variety of trade unions who represent approximately 230,000 employees working for the federal public service of the Government of Canada (the "government") and a number of other federal agencies (jointly the "employer").

2. This complaint concerns provisions of the omnibus budget implementation legislation entitled *Economic Action Plan 2015 Act, No. 1* ("Bill C-59").

3. Bill C-59 restricts the scope of collective bargaining by granting the government the power to make changes to existing collective agreements without negotiating with the affected workers' associations. In particular sections 253 to 273 of Bill C-59 create exemptions to the *Public Service Labour Relations Act*, the *Financial Administration Act* and the *Statutory Instruments Act* that allow the employer to remove, amend and unilaterally impose a broad and fundamental class of terms and conditions of employment relating to sick leave and disability insurance that were formerly freely negotiated through collective bargaining.

4. Specifically, the employer, unsatisfied with its inability to extract significant concessions at the bargaining table, has through legislative action, bestowed upon itself the ability to unilaterally establish terms and conditions of employment in complete disregard of its own collective bargaining regime and its employees' freedom of association and their right to bargain collectively.

5. Furthermore, Bill C-59 was introduced without prior consultation and rushed through the legislature with purely superficial consultation of a few of the affected unions, contrary to the Committee on Freedom of Association's oft-repeated stipulation that workers' organizations should be consulted with respect to the preparation and implementation of laws and regulations affecting their interests.

6. The provisions of Bill C-59 relating to sick leave violate the *Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)*, which was ratified by Canada in 1972.

7. The impugned provisions of Bill C-59 also violate basic principles of the ILO as embodied in the *Right to Organize and Collective Bargaining Convention,* 1949 (No. 98), the *Labour Relations (Public Service) Convention,* 1978 (No. 151), and the *Collective Bargaining Convention*, 1980 (No. 154).

8. For the reasons set forward below, the complainants request that the Committee on Freedom of Association:

    a) Request that the Government of Canada repeal the provisions of Bill C-59 that are inconsistent with ILO principles and conventions;

    b) Request that the Government of Canada make every effort in the future to avoid having recourse to legislation to modify existing collective agreements.

II. FACTUAL BACKGROUND

(A) The Complainants

9. The National Joint Council includes eighteen public service bargaining agents, Treasury Board, and a number of "separate employers". Its purpose is to facilitate co-development, consultation and information sharing between the government and public service bargaining agents.

10. A complete list of the eighteen NJC Bargaining Agents can be found at Appendix "A".

11. The NJC Bargaining Agents represent public servants employed in diverse capacities, including as lawyers, engineers, accountants, translators, health professionals, correctional officers, foreign service officers, computer scientists, economists, and border service officers. Thus, the NJC Bargaining Agents represent both public servants exercising authority in the name of the state and public servants who do not exercise state authority.

> **Appendix A: National Joint Council Bargaining Agent Side Members and the Bargaining Units They Represent that are Impacted by Bill C-59;**

12. Employees in these bargaining units are employed by the Treasury Board of Canada Secretariat (the "Treasury Board") in the core federal public service, as well as other federal government agencies and organizations, which are outlined at Appendix "B".

13. The NJC Bargaining Agents are currently in negotiations with the employer to renew their collective agreements. A summary of the current bargaining status of all of the affected bargaining units is included at Appendix "A".

(B) History of Bill C-59

14. In 2013, a year before collective bargaining was set to begin between the employer and each NJC bargaining agent, Treasury Board made clear its intention to replace the

existing sick leave benefits with a short-term disability plan. The long-term disability plan would also be overhauled and integrated with the new short-term plan with the new system to be put in place by July, 2016. The contracting process for a provider would begin in 2014 with the expectation of awarding a contract in 2015. All employees, including unionized employees covered by collective agreements, would be affected.

15. On December 9, 2013, before collective bargaining had begun, Treasury Board informed potential insurance providers of the government's intention to procure a short-term disability plan and to re-tender the existing Disability Insurance plans and related requirements. At this time, bargaining agents were informed that Treasury Board would be launching a competitive process to solicit services for the administration and management of the disability plans on behalf of the Government of Canada.

16. In 2013, the Treasury Board president also began a public campaign against the existing sick leave benefits. Among other attacks on the public service unions, the Treasury Board president claimed that unionisation was responsible for "psychological entitlement" which leads to absenteeism. In an effort to sway public opinion against the existing benefits, the Treasury Board president also published misleading statistics about the rate of sick leave usage in the public service; the non-partisan Parliamentary Budget Office later revealed that these figures had been inflated by more than 50%.

> **John Ivison, *Tony Clement won 'sick days' skirmish, but decisive battle with unions still to come*, online: National Post < http://news.nationalpost.com/full-comment/john-ivison-tony-clement-won-sick-days-skirmish-but-decisive-battle-with-unions-still-to-come >**
>
> **Appendix C: Report from the Parliamentary Budget Office criticizing the Treasury Board statistics.**

17. Before the parties had exchanged bargaining demands, Treasury Board communicated directly with its employees about its new "Workplace Wellness and Productivity Strategy". The language used in the communication left employees in no doubt that a new sick leave regime was a 'fait accompli'. One representative communiqué, sent to employees at Correctional Services Canada on April 22, 2014, is included in Appendix "D".

> **Appendix D: Sample Communiqué from Treasury Board concerning Short-Term Disability Program**

18. The Public Service Alliance of Canada (PSAC) and the Professional Institute of the Public Service of Canada have filed an unfair labour practices complaints with the Public Service Labour Relations Board, alleging that these communiqués constitute interferences with collective bargaining. A copy of the PSAC complaint is included at Appendix "E". A copy of the PIPSC complaint is included at Appendix "F"

> **Appendix E: Unfair Labour Practices Complaint from the Public Service Alliance of Canada to the Public Service Labour Relations Board.**

19. The NJC bargaining agents each began re-negotiating their collective agreements as they expired in 2014-2015. In bargaining, the Treasury Board negotiators made it clear that any renewed collective agreement must include the proposed sick leave reductions and that no compensation would be offered for the removal of benefits. The Treasury Board negotiators were also unable to answer many basic questions from the NJC bargaining agents, including questions about the projected costs of the short-term disability plan, the number of caseworkers who would manage disability files, and whether the STDP would be managed internally or by a private sector third-party.

20. While negotiations were ongoing, the government announced that the April 2015 federal budget would include $900 million in 'savings' from the reduction in sick leave benefits. These 'savings' will fund most of the governments projected $1.4 billion surplus as it enters an election in October of 2015. The claimed savings have been criticized by the Parliamentary Budget Office, which concluded that, because employees on sick leave are seldom replaced, there is no "fiscally material" cost to the existing sick leave program.

21. Prior to the budget announcement, the government had not informed the bargaining agents of its intention to resort to legislation.

22. In Bill C-59, the implementation act for the April 2015 budget, the government included provisions granting Treasury Board the power to impose the concessions it had, thus far, been unable to achieve through negotiation. The sick leave provisions at the centre of this complaint are only a small fraction of Bill C-59's more than 150 pages.

23. Bill C-59 was introduced into the House of Commons on May 7, 2015 and it received royal assent on June 23, 2015. This short time frame made it practically impossible for the bargaining agents, or other subject matter experts, to be adequately consulted or to have sufficient time to express their views. In particular, there was insufficient time to properly study the usage of sick leave within the public service. There was also insufficient time to have experts verify the government's projected cost savings, which have been criticized as wildly inflated. While union representatives from three of the eighteen NJC bargaining agents were invited to appear before the House of Commons Standing Committee on Finance to express their concerns, the committee spent less than an hour hearing their testimony.

24. On June 26, 2015, the Canadian Association of Professional Employees (CAPE) and the Professional Institute of the Public Service of Canada (PIPSC), jointly, and with 10 other NJC bargaining agents, filed an application in the Ontario Superior Court of Justice alleging that the provisions of Bill C-59 relating to sick leave are unconstitutional. This application alleges that Bill C-59 contravenes the guarantee to freedom of association contained in s. 2(d) of the *Canadian Charter of Rights and Freedom.* The application is included in Appendix "G".

25. On June 30, 2015, the Public Service Alliance of Canada (PSAC), also a NJC bargaining agent, filed an application in the Ontario Superior Court of Justice also alleging that the provisions of Bill C-59 are unconstitutional. This application is included in Appendix "H".

26. On August 10, 2015, PIPSC and PSAC each filed a notice of motion for an injunction, requesting that the Ontario Superior Court of Justice issue an order staying the operation of sections 253 to 273 of Bill C-59. This interim order was sought after the employer refused a written request to commit to not using its powers under Bill-C59 until the final disposition of the above-mentioned constitutional challenges. The Ontario Superior Court of Justice has scheduled the motion hearing for October 30, 2015. Copies of these motions are attached as Appendix "I" and "J".

(C) Specific Complaints Concerning Bill C-59

27. The impact of Bill C-59 on labour relations between the government and public servants is neither minor nor technical. Bill C-59 entails the wholesale removal of important sick leave related terms and conditions of employment from the scope of collective bargaining. The employer is, for an indefinite period of time, authorized to rewrite existing collective agreements to remove or modify negotiated sick leave benefits. A detailed description of the impugned provisions follows. The text of the measures specifically complained of can be found in Appendix "K".

28. Section 254 of Bill C-59 allows Treasury Board to rewrite the sick leave provisions of existing collective agreements without consulting with the relevant bargaining agents. This process does not adhere to the government's own framework for revising collective agreements, which is contained within the *Public Service Labour Relations Act.*

29. Section 254(2)(a) of Bill C-59 allows Treasury Board to remove or reduce the sick leave to which employees are entitled under their respective collective agreements.

30. Section 254(2)(b) of Bill C-59 allows Treasury Board to modify provisions in collective agreements relating to the circumstance under which unused sick leave carries forward from year to year.

31. Section 254(2)(c) of Bill C-59 allows Treasury Board to unilaterally remove "banks" of sick leave that had been carried forward from previous years. The removal of these sick leave "banks" represents a retroactive claw back of benefits earned in previous years.

32. Section 257 allows Treasury Board to override protections in place with the *Public Service Labour Relations Act* for terms and conditions of employment in force during the bargaining process that are inconsistent with the terms established by Treasury Board and as permitted by Bill C-59.

33. Section 254(1) allows Treasury Board to set an "effective date". For the four years following the "effective date", section 258(1) renders ineffective any arbitral award that is inconsistent with the terms imposed by Treasury Board.

34. Sections 260-266 of Bill C-59 authorize Treasury Board to create a new short-term disability program. This short-term disability program is intended to replace the sick leave benefits that are removed under Section 254. Bill C-59 does not, however, require the government to ensure that the short-term disability program provides a comparable level of insurance to the existing sick leave benefits.

35. Section 262 of Bill C-59 removes the proposed short-term disability program from the scope of collective bargaining. For a period of four years following the "effective date", any terms in negotiated or awarded collective agreements that conflict with the program imposed by Treasury Board are rendered ineffective.

(D) Existing Sick Leave Benefits

36. All current collective agreements between the employer and the NJC bargaining agents include language granting employees sick leave credits.

37. Employees who are unable to perform their duties because of illness or injury may be placed on sick leave if they have sufficient sick leave credits. While on sick leave, employees receive their full rate of pay.

38. In order to be placed on sick leave, employees must satisfy their employer that they were unable to fulfill their duties. Generally a statement signed by the employee is sufficient to satisfy this obligation, although the employer has the right to request a medical note for every period of sick leave usage.

39. The existing collective agreements grant each full-time employee one and one quarter days of sick leave for each month of employment. In total, employees receive fifteen days of sick leave each year.

40. Unused sick leave credits accumulate in a "bank" which is carried forward from year-to-year. The "banking" of sick leave is an important aspect of the benefits for public servants. Many public servants accumulate significant "banks" of sick leave, which they rely on when faced with prolonged illness, disease, injury and/or medical procedures. These "banks" allow public servants to avoid drawing a reduced salary under Employment Insurance while waiting the 13 weeks necessary to access the long-term disability program.

(E) Proposed Changes to Sick Leave

41. Although Treasury Board has yet to exercise the power to modify sick leave, the government has indicated that it will do so if it is unable to achieve concessions through negotiation. It is presumed that the conditions imposed will be similar to those rejected by the bargaining agents.

42. Treasury Board proposes to substantially reduce the allocation of sick leave credits, and to replace the removed benefits with a short-term disability program.

43. Under the Treasury Board proposal, sick leave credits that have been "banked" over the course of an employee's career will be removed without compensation. For many public

servants, these "banks" total more than a hundred days of sick leave credits. Sick leave credits will also no longer carry forward from year to year.

44. Treasury Board has also indicated that it intends to significantly reduce the annual allocation of sick leave credits from fifteen days per year to six days per year.

45. Treasury Board proposes to supplement this sick leave allotment with a new short-term disability program. In the most recent bargaining cycle, Treasury Board provided some information about the contemplated short-term disability program.

46. The proposed Short Term Disability Plan provides employees with no income for the first seven calendar days in which they are unable to fulfill their duties. Employees may use their sick leave credits or vacation days during the waiting period in order to receive pay.

47. As each public servant will be allocated only six days of sick leave per year, entering the short-term disability program only once is sufficient to drain a full year's allotment of sick leave. Employees who suffer from chronic illnesses requiring minor but frequent absences from work will be particularly disadvantaged.

48. After the elapse of the "waiting period", employees enrolled in the Short Term Disability Plan will receive their full salary for their first five weeks in the program and 70% of their salary for the next twenty weeks.

49. After twenty-six weeks in the Short Term Disability Program, employees may be eligible to enrol in a long-term disability program that lies outside the scope of the collective agreement.

III. COMPLAINANTS' ALLEGATIONS

(A) Relevant ILO Conventions and Principles

50. Bill C-59 is contrary to Canada's obligations under Convention No. 87 on the *Freedom of Association and Protection of the Right to Organize.*

51. Article 8 of Convention No. 87 requires that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

Convention No. 87 at Art. 2

52. Article 3 of Convention No. 87 guarantees the rights of workers' organizations to organize their activities:

> 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Convention No. 87 at Art. 3

53. Interferences with the collective bargaining process, such as those contained within Bill C-59, impair the right to Freedom of Association. The Committee on Freedom of Association has repeatedly held that, "The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association" and that interferences with the process, "appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes."

> **ILO, Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised) edition, Geneva, 2006 ["Digest"] at para. 881.**

54. The preliminary work done prior to the adoption of Convention No. 87 also states:

> One of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form organisations independent of the public authorities and capable of determining wages and other conditions of employment by means of freely concluded collective agreements.
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> **Freedom of Association and Industrial Relations, Report VII, International Labour Conference, 30th Session, Geneva, 1947, p. 52**

55. Although the *Right to Organise and Collective Bargaining Convention,* 1949 (No. 98) does not apply directly to public servants, the text of the convention underscores the importance of collective bargaining. Article 4 of Convention No. 98 states:

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.
>
> **Convention No. 98 at Art. 4**

56. The *Labour Relations (Public Service) Convention,* 1972 (No. 151) emphasises the importance of free negotiations in determining public servants' terms and conditions of work. Article 7 of Convention No. 151 states:

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.
>
> **Convention No. 151 at Art. 7**

57. The *Collective Bargaining Convention,* 1981 (No. 154) further underscores the importance of free negotiations between employers and workers' associations. Article 1 of the Convention establishes that it applies to both private and public employees:

1. This Convention applies to all branches of economic activity.

...

3. As regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice.

Convention No. 154 at Art. 1

58. Article 2 of Convention No. 154 establishes that the scope of collective bargaining should include the establishment of terms and conditions of employment.

Convention No. 154 at Art. 2

59. Article 5 of Convention No. 154 indicates that measures adapted to national circumstances should be taken to promote collective bargaining.

Convention No. 154 at Art. 5

(B) The Sick Leave Provisions of Bill C-59 Violate ILO Conventions and Principles

60. The complainants assert that the impugned provisions of Bill C-59 violate important ILO conventions, including the *Freedom of Association and Protection of the Right to Organise Convention,* 1948 (No. 87), the *Right to Organize and Collective Bargaining Convention,* 1949 (No. 98), the *Labour Relations (Public Service) Convention,* 1978 (No. 151), and the *Collective Bargaining Convention*, 1980 (No. 154).

61. Bill C-59 grants Treasury Board the authority to remove and modify sick leave provisions, irrespective of whether these modifications comply with any restrictions that may be contained within collective agreements. As such, Bill C-59 removes an important condition of employment from the sphere of collective bargaining. The government's power to unilaterally rewrite the sick leave provisions of collective agreements renders negotiations with respect to sick leave untenable.

62. The Committee on Freedom of Association has recognized that benefits such as sick leave are the proper subjects of collective bargaining.

ILO, Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised) edition, Geneva, 2006 ["Digest"] at para. 913

63. The Committee on Freedom of Association has held that, "Measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with Convention No. 98." The Committee on Freedom of Association has also held that legislation which establishes ministerial power to dictate, "wages, working hours, rest periods, leave and conditions of work" and to insert those provisions into collective agreements is "not in harmony with Article 4 of Convention No. 98."

Digest at para. 919

64. The Committee on Freedom of Association has underscored the importance of honouring negotiated-for benefits and not engaging in the legislative modification of collective agreements, stating that:

> Collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured, at the very least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights which were given more priority by trade unions and their members. *If these rights, for which concessions on other points have been made, can be cancelled unilaterally, there could be neither reasonable expectation of industrial relations stability, nor sufficient reliance on negotiated agreements.*
>
> **Digest at para. 941**

65. The Committee on Freedom of Association has stated, "State bodies should refrain from intervening to alter the content of freely concluded collective agreements" and that such intervention "is inconsistent with the spirit of Article 4 of Convention No. 98."

> **Digest at para. 1001-1002.**

66. The Committee on Freedom of Association has also held that, "respect for the rule of law implies avoiding retroactive intervention in collective agreements."

> **Case No. 2821 at para. 380**

67. The Committee on Freedom of Association has held that, "a legal provision which allows the employer to modify unilaterally the content of signed collective agreements, or to require that they be renegotiated, is contrary to the principles of collective bargaining."

> **Case No. 1731, *292nd Report of the Committee on Freedom of Association*, para. 785**

68. The Committee on Freedom of Association has held that,

> The suspension or derogation by decree - without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98.
>
> **Digest at para. 1008.**

69. The complainants submit that Bill C-59 effectively authorizes the government to nullify the provisions relating to sick leave in existing collective agreements and thus infringes the principle of free and voluntary collective bargaining.

70. While the Committee on Freedom of Association has recognized circumstances under which it is acceptable for governments to make legislative modifications to public servants' terms and conditions of employment, it has only done so in exceptional circumstances. Because of the projected modest budgetary surplus, the complainants submit that the government was not faced with exceptional circumstances requiring

intervention into collective bargaining. Moreover, in light of the Parliamentary Budget Office's conclusion that the sick leave benefits are not a fiscally material cost, no fiscal pressure could justify the removal of benefits.

Digest at para. 1004

71. The Committee on Freedom of Association has held that there are certain circumstances under which a deadlock in the negotiations justifies governmental intervention. The complainants submit that the failure of bargaining agents to accept substantially reduced benefits cannot constitute such a deadlock. If the government is allowed to justify intervention on the basis of the failure of workers' associations to capitulate entirely, free and voluntary collective bargaining cannot exist between the government and public servants.

Digest at para. 1004

72. The complainants submit that the negotiation process was not allowed time to properly progress before the government opted to resort to legislation. Even after the introduction of Bill C-59, representatives of the NJC Bargaining Agents continued to meet with Treasury Board negotiators. Furthermore, many barriers at the negotiating table can be attributed to the governments' refusal to provide compensation for the removed benefits and its failure to answer very basic and fundamental questions posed by the bargaining agents.

73. The complainants submit that if there had been a deadlock in negotiations, the appropriate response would have been to refer the matter to independent arbitration or conciliation rather than to impose new conditions of employment through legislation. The Committee on Freedom of Association has held that:

> *Any intervention by the public authorities in collective disputes must be consistent with the principle of free and voluntary negotiations; this implies that the bodies appointed for the settlement of disputes between the parties to collective bargaining should be independent and recourse to these bodies should be on a voluntary basis, except where there is an acute national crisis.*

Digest at para. 1004

74. The complainants note that the availability of third-party arbitration has been undercut by Section 258(1) of Bill C-59, which disallows arbitral awards that are inconsistent with the sick leave benefits imposed by Treasury Board.

75. The complainants acknowledge that the Committee on Freedom of Association has endorsed the Committee of Experts' statement that,

> While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by Convention No. 151, the special characteristics of the public service described above require some flexibility in its application.

Digest at para. 1038

76. The Committee on Freedom of Association has emphasized, however, that any intervention must preserve a "significant role for collective bargaining". Bill C-59 does not preserve a significant role for collective bargaining. Treasury Board is authorized to impose terms and conditions of employment without consulting with any affected workers' associations

Digest at para. 1038

77. The Committee on Freedom of Association has endorsed the Committee of Experts' 1994 General Survey which states,

> It is essential, however, that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that *they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts.*

Digest at para. 1038

78. The complainants allege that the government has not provided bargaining agents with the information necessary to assess the proposed short-term disability program. In particular, the government has not answered requests for information regarding the projected cost of the new short-term disability plan, the number of caseworkers to be hired, and whether a third-party will administer the short-term disability program.

79. In the 1994 General Survey, the Committee of Experts also noted that,

> ... The authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, *measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected.*

Digest at para. 1038

80. Bill C-59 does not protect the standard of living of the workers who are most affected. The proposed short-term disability program does not provide a comparable level of coverage to the existing sick leave program. Older workers are the most dependent on the adequate provision of sick leave benefits; these workers, as well as workers with disabilities and chronic illnesses are most impacted by the removal of banked sick leave.

(C) Lack of Consultation Prior to the Enactment of Bill C-59

81. The government did not satisfy its obligation to consult with workers' associations prior to the introduction of legislation that affects their interests. This obligation has been recognized by the Committee on Freedom of Association, which has stated that:

> The Committee has emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests.

Digest at para. 1072

82. The Committee on Freedom of Association has particularly emphasized the obligation to consult with affected workers' associations prior to the introduction of legislation that limits the right to bargain collectively. The Committee on Freedom of Association has stated that:

> In any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement.
>
> **Digest at para. 999**

83. The Committee on Freedom of Association has also stated that:

> It is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers.
>
> **Digest at para. 1075**

84. The Committee on Freedom of Association has indicated that consultations are particularly important where the government introduces legislation that alters the collective bargaining structures of the public service:

> The Committee has stated, in the same way as the Committee of Experts, that where a government seeks to alter bargaining structures in which it acts actually or indirectly as employer, it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall national interest can be discussed by all parties concerned. Such consultations imply that they be undertaken in good faith and that both partners have all the information necessary to make an informed decision.
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> **Digest at para. 1086**

85. As noted above, the complainants submit that the government engaged in insufficient consultation prior to the enactment of Bill C-59 and that those negotiations which did occur were conducted in bad faith.

86. The government's actions prior to beginning collective bargaining reveal that the process was not undertaken in good faith. The government commenced the tendering process by sending requests for information to industry for the short-term disability program before collective bargaining had even begun. The government also communicated with its employees as though the program's introduction was inevitable. These actions reveal the government's resolve to not seriously consider the objections of the NJC Bargaining Agents.

87. The Committee on Freedom of Association has indicated that providing affected workers' associations with material information is a necessary precondition for good faith consultations. The Committee on Freedom of Association has endorsed the opinion of the Committee of Experts, which stated that the full disclosure of material information is

particularly important where the government proposes to interfere in the collective bargaining of public servants:

> ...It is essential, however, that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts.

Digest at Para. 1038

Digest at Para. 1086

88. The government has not fulfilled its obligation to fully disclose information material to the proposed short-term disability program. During negotiations, the government failed to answer questions concerning the projected cost of the new short-term disability program, the number of caseworkers required and whether the plan would be administered in house or through a third party provider. Moreover, the Parliamentary Budget Office has criticized as misleading that information which the government has provided regarding the costs of the existing system.

Appendix C: Report from the Parliamentary Budget Office criticizing the Treasury Board statistics.

89. The government did not consult with the NJC bargaining agents about the introduction of Bill C-59. The bargaining agents were not informed of the government's intent to resort to legislation until the budget was announced to the public.

90. The bargaining agents were given only minimal consultation after the introduction of Bill C-59. Only three of the eighteen NJC bargaining agents were given the opportunity to address the House of Commons Standing Committee on Finance. In total, the Standing Committee on Finance heard less than an hour of union testimony.

IV. Conclusion

91. In conclusion, the complainants submit that Bill C-59 has reduced the scope of collective bargaining and stripped workers of previously negotiated-for benefits. The complainants allege that the offending provisions of Bill C-59 are therefore contrary to ILO conventions and principles, particularly the right to freedom of association and the right to bargain collectively. The complainants also submit that the government did not fulfill its obligation to consult with affected workers' associations before introducing legislation which affects their interests.

92. The complainants request, for the reasons set out above, that the Committee on Freedom of Association:

    a) Request that the Government of Canada repeal the provisions of Bill C-59 that are inconsistent with ILO principles and conventions;

b) Request that the Government of Canada make every effort in the future to avoid having recourse to legislation to modify existing collective agreements.