

## **APPENDIX A TO D**

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

Bargaining Agent and Bargaining Units	Status of Negotiations
<b>Association of Canadian Financial Officers</b>	
Financial Management (TB)	Expiry Date of Collective Agreement: November 6, 2014 Notice to Bargain: July 9, 2014 Bargaining Dates: September, 9, 2014 November 4-6, 2014 January 6-8, 2015 February 17-18, 2015 May 5-6, 2015 August 11-13, 2015 November 17-19, 2015 (Scheduled)
<b>Association of Justice Counsel</b>	
Law (TB)	Expiry Date of Collective Agreement: May 9, 2014 Notice to Bargain: January 9, 2014 Bargaining Dates: February 26, 2014 (Proposals Exchanged) May 26-27, 2014 July 28-30, 2014 (Cancelled for lack of sick leave/STDP proposal from Employer) October 7, 2014 November 24, 2014 January 26, 2015 June 9, 2015 July 21, 2015

Bargaining Agent and Bargaining Units	Status of Negotiations
<b>Canadian Air Traffic Control Association, CATCA Unifor, Local 545</b>	
Air Traffic Control (TB)	Expiry Date of Collective Agreement: June 30, 2014 Notice to Bargain: September 29, 2014 Bargaining Dates: November 4-5, 2014 June 1 and 4, 2015
<b>Canadian Association of Professional Employees</b>	
Economics and Social Science Services (TB)	Expiry Date of Collective Agreement: June 21, 2014 Notice to Bargain: February 24, 2014 Bargaining Dates: June 11 and 14, 2014 July 22 and 23, 2014 September 30, 2014 October 1, 15 and 16, 2014 December 16, 2014 January 20-22, 2015 April 28-30, 2015 June 23 and 25, 2015 September 22-23, 2015 (Scheduled)
Translation (TB)	Expiry Date of Collective Agreement: April 18, 2014 Notice to Bargain: March 7, 2014 Bargaining Dates: June 17-19 2014 September 17-18, 2014 October 21-23, 2014 December 3-4, 2014 February 3-5, 2015 September 15-17, 2015 (Scheduled)

Bargaining Agent and Bargaining Units	Status of Negotiations
<b>Canadian Federal Pilots Association</b>	
Aircraft Operations (TB)	Expiry Date of Collective Agreement: January 25, 2015 Notice to Bargain: September 25, 2014 Bargaining Dates: January 16, 2015 March 31 to April 2, 2015 May 26-28, 2015 October 26-30, 2015 (Scheduled) November 16-20, 2015 (Scheduled)
<b>Canadian Merchant Service Guild</b>	
Ships' Officers (TB)	Expiry Date of Collective Conciliation Agreement: March 31, 2014 Notice to Bargain: February 4, 2014 Bargaining Dates: June 17-18, 2014 November 25-27, 2014 February 3-5, 2015 July 7-8, 2015
<b>Canadian Military Colleges Faculty Association</b>	
University Teaching (TB)	Expiry Date of Collective Agreement: June 30, 2014 Notice to Bargain: February 28, 2014
<b>Federal Government Dockyard Chargehands Association</b>	
Ship Repair Chargehands and Production Supervisors-East (TB)	Expiry Date of Collective Agreement: March 31, 2014 Notice to Bargain: December 5, 2013 Bargaining Dates: February 17-18, 2014



Bargaining Agent and Bargaining Units	Status of Negotiations
<b>Federal Government Dockyard Trades and Labour Council (East)</b>	
Ship Repair-East (TB)	Expiry Date of Collective Agreement: December 31, 2014 Notice to Bargain: December 5, 2013 Bargaining Dates: December 9-11, 2014 February 9-11, 2015
<b>Federal Government Dockyard Trades and Labour Council (West)</b>	
Ship Repair-West (TB)	Expiry Date of Collective Conciliation Agreement: January 30, 2015 Notice to Bargain: September 30, 2014 Bargaining Dates: March 30-April 2, 2015 June 22-26, 2015
<b>International Brotherhood of Electrical Workers, Local 2228</b>	
Electronics (TB)	Expiry Date of Collective Agreement: August 31, 2014 Notice to Bargain: May 1, 2014 Bargaining Dates: July 8-10, 2014 January, 2015 June 2015 (Informal Meeting) October 2015 (Scheduled)
<b>Professional Association of Foreign Service Officers</b>	
Foreign Service (TB)	Expiry Date of Collective Agreement: June 30, 2014 Notice to Bargain: February 28, 2014 Bargaining Dates:

	January 6-8, 2015 March 31 - April 2, 2015 April 29 - May 1, 2015 June 22-24, 2015 September 22-24, 2015 (Scheduled)
Bargaining Agent and Bargaining Units	Status of Negotiations
Professional Institute of the Public Service of Canada	
Applied Science and Patent Examination Group (TB)	Expiry Date of Collective Agreement: September 30, 2014 Bargaining Dates: Dec 3-4-5, 2015 Jan 8-9, 2015 Apr 21-23 2015 May 20-21, 2015 Sept 8-10, 2015 (scheduled)
Audit, Commerce and Purchasing (TB)	Bargaining Dates: December 16-18, 2014 January 20-22, 2015 April 14-16, 2015 July 7-9, 2015 October 6-8, 2015 (scheduled)
Architecture, Engineering and Land Survey Groups (TB)	Expiry Date of Collective Agreement: September 30, 2014 Notice to Bargain: June 2, 2014 Bargaining Dates: Mar 17-18, 2015 Apr 21-23, 2015 Jun 9-11, 2015 Sept 1-3, 2015
Computer Systems (TB)	Expiry Date of Collective Agreement: December 21, 2014 Notice to Bargain:

	August 21, 2014 Bargaining Dates: Mar 4-5, 2015 Apr 14-16, 2015 Jun 15-17, 2015 Sept 8-9-10, 2015
Health Services (TB)	Expiry Date of Collective Agreement: September 30, 2014 Notice to Bargain: June 2, 2014 Bargaining Dates: Jan 20-21-22, 2015 Feb 16-17-18, 2015 Mar 17-18-19, 2015 Apr 14-15-16, 2015 May 20-21, 2015 Sept 29-30, Oct 1, 2015 (scheduled)
Research (TB)	Expiry Date of Collective Agreement: September 30, 2014 Notice to Bargain: June 21 2014 Bargaining Dates: Feb 11-12, 2015 Apr 14-15, 2015 May 27 & 28, 2015
<b>Bargaining Agent and Bargaining Units</b>	<b>Status of Negotiations</b>
<b>Public Service Alliance of Canada</b>	
Border Services (TB)	Expiry Date of Collective Agreement: June 20, 2014 Notice to Bargain: April 16, 2014 Bargaining Dates:

	July 8-10, 2014; September 9-11, 2014; November 18-20, 2014; January 13-15, 2015; March 24-26, 2015; and June 16-18, 2015
Education and Library Science (TB)	<p>Expiry Date of Collective Agreement: June 30, 2014</p> <p>Notice to Bargain: February 28, 2014</p> <p>Bargaining Dates: July 8-10, 2014; September 9-11, 2014; November 18-20, 2014; January 13-15, 2015; March 24-26, 2015; and June 16-18, 2015</p>
Operational Services (TB)	<p>Expiry Date of Collective Agreement: October 4, 2014</p> <p>Notice to Bargain: April 4, 2014</p> <p>Bargaining Dates: July 8-10, 2014; September 9-11, 2014; November 18-20, 2014; January 13-15, 2015; March 24-26, 2015; and June 16-18, 2015</p>
Program and Administrative Services (TB)	<p>Expiry Date of Collective Agreement: June 20, 2015</p> <p>Notice to Bargain: February 24, 2014</p> <p>Bargaining Dates: July 8-10, 2014; September 9-11, 2014; November 18-20, 2014; January 13-15, 2015; March 24-26, 2015; and June 16-18, 2015</p>
Technical Services (TB)	<p>Expiry Date of Collective Agreement: June 21, 2014</p> <p>Notice to Bargain: February 24, 2014</p> <p>Bargaining Dates: July 8-10, 2014; September 9-11, 2014; November 18-20, 2014; January 13-15, 2015; March 24-26, 2015; and June 16-18, 2015</p>

Bargaining Agent and Bargaining Units	Status of Negotiations
<b>Research Council Employees' Association</b>	
Administrative Services (NRCC)	Expiry Date of Collective Agreement: April 30, 2015 Notice to Bargain: April 17, 2015
Administrative Support (NRCC)	Expiry Date of Collective Agreement: April 30, 2015 Notice to Bargain: April 17, 2015
Computer Systems (NRCC)	Expiry Date of Collective Agreement: December 21, 2014 Notice to Bargain: December 12, 2014
Operations Category - Non-Supervisory (NRCC)	Expiry Date of Collective Agreement: July 30, 2015 Notice to Bargain: May 14, 2015
Purchasing and Supply Group (NRCC)	Expiry Date of Collective Agreement: April 30, 2015 Notice to Bargain: April 17, 2015
Technical Category (NRCC)	Expiry Date of Collective Agreement: March 31, 2014 Notice to Bargain: January 21, 2014
<b>Unifor, Local 2182</b>	
Radio Operations (TB)	Expiry Date of Collective Agreement: April 30, 2014 Notice to Bargain: January 17, 2014 October 15-17, 2014 February 17-19, 2015 June 23-25, 2015, October 2015 (Scheduled)

Bargaining Agent and Bargaining Units	Status of Negotiations
<b>Unifor, Local 87-M</b>	
Printing Operations (non supervisory) (TB)	Expiry Date of Collective Agreement: October 11, 2014 Notice to Bargain: June 2, 2014
<b>Union of Canadian Correctional Officers - CSN</b>	
Correctional Services (TB)	Expiry Date of Collective Agreement: May 31, 2014 Notice to Bargain: February 17, 2014

## **APPENDIX B: Governmental Employers of National Joint Council Bargaining Agent Members**

Canada Revenue Agency (CRA)

Canadian Food Inspection Agency (CFIA)

Canadian Nuclear Safety Commission (CNSC)

Canadian Security Intelligence Service (CSIS)

Communications Security Establishment, DND (CSE)

House of Commons (H of C)

Library of Parliament (L of P)

National Capital Commission (NCC)

National Energy Board (NEB)

National Film Board (NFB)

National Research Council of Canada (NRCC)

Office of the Auditor General Canada (OAGC)

Office of the Superintendent of Financial Institutions (OSFI)

Parks Canada Agency (PCA)

Senate of Canada (SEN)

Social Science & Humanities Research Council (SSHRC)

Staff of the Non-Public Funds, Canadian Forces (SNPFCF)

Statistical Survey Operations (SSO)

Treasury Board of Canada Secretariat (TB)

OFFICE OF  
THE PARLIAMENTARY BUDGET OFFICER



BUREAU DU  
DIRECTEUR PARLEMENTAIRE DU BUDGET

## Fiscal Materiality of Sick Leave in 20 Departments of the Core Public Administration

Ottawa, Canada  
July 16, 2014  
[www.pbo-dpb.gc.ca](http://www.pbo-dpb.gc.ca)



The mandate of the Parliamentary Budget Officer (PBO) is to provide independent analysis to Parliament on the state of the nation's finances, the government's estimates, and trends in the national economy; and upon request from a committee or parliamentarian, to estimate the financial cost of any proposal for matters over which Parliament has jurisdiction.

In February 2014, PBO published a report estimating the fiscal impact of paid sick leave in the federal public service at \$871 million in 2011-12. PBO received a follow-up request from Mr. Paul Dewar, Member of Parliament for Ottawa Centre, to undertake an independent financial analysis of the variance in sick leave costs among departments.

### **Summary**

Data obtained by the Treasury Board Secretariat (TBS) from individual core public administration (CPA) departments demonstrate a notable variance among organizations in the use of sick leave. This report provides a snapshot of the fiscal and budgetary materiality of paid sick leave based on 20 CPA departments. The analysis suggests that in 2011-12 the incremental cost of paid sick leave was not fiscally material and did not represent material costs for departments in the CPA.

Data quality and availability limit PBO's ability to provide Parliament with fiscal analysis of sick leave in the public service. Data provided to PBO by TBS are highly aggregated, while data obtained from departments suffer from significant inconsistencies that prevent reconciliation. Parliamentarians should keep these limitations in mind when drawing conclusions based on analysis derived from these data sets.

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The author wishes to thank Peter Weltman for his helpful comments. Any errors or omissions are the responsibility of the author. Please contact Peter Weltman (email: [peter.weltman@parl.gc.ca](mailto:peter.weltman@parl.gc.ca)) for further information.

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## 1 Introduction

The Parliamentary Budget Officer (PBO) may, upon request from a committee or parliamentarian, estimate the financial cost of any proposal over which Parliament has jurisdiction.<sup>1</sup>

In February 2014, PBO published a report titled *Fiscal Analysis of Sick Leave in the Federal Public Service*.<sup>2</sup> It estimated that time lost due to illness<sup>3</sup> amounted to the equivalent of \$871 million in regular wages in 2011-12. This analysis was based on an average of 11.52 sick days per employee.<sup>4</sup>

However, in the same fiscal year, the average paid sick leave among 20 of the largest departments in the core public administration (CPA) ranged from 7.7 days in the Department of Foreign Affairs and International Trade to 14.6 days in Correctional Service Canada.<sup>5</sup> Accordingly, PBO received a request to undertake additional analysis of the sick leave data to assess the fiscal materiality of sick leave on individual departments in the CPA.

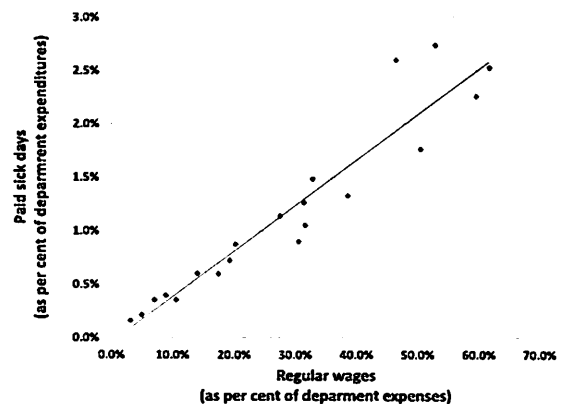
PBO found a significant variance in the share of *paid sick leave* to CPA departments, ranging from 0.16 per cent to 2.74 per cent of total departmental expenditures in 2011-12. In most cases, paid sick leave is proportional to departmental spending on regular wages (Figure 1).

Since most departments do not call in replacements when an employee takes a sick day, there are no incremental costs. Exceptions to this practice include

certain departments with operational functions, where absences have a direct impact on service level, health and safety.<sup>6</sup>

Accordingly, PBO requested data pertaining to three employee groups where backfilling is routinely necessary: the Canadian Coast Guard<sup>7</sup>, Border Services officers<sup>8</sup> and Corrections officers<sup>9</sup>. Of the two departments that provided a response, neither reported incremental costs that were material when compared to departmental budgets, nor to departmental wage envelopes.

**Figure 1 - Share of departmental expenditures, 2011-12**



Source: PBO analysis.

<sup>1</sup> *Parliament of Canada Act* (2007).

<sup>2</sup> Available on the PBO website (<http://pbo-dpb.gc.ca/files/get/publications/279?path=%2Ffiles%2Ffiles%2FSick+Leave+EN.pdf>).

<sup>3</sup> Defined as salary dollars expended while employee on leave. This is not an incremental salary expense.

<sup>4</sup> Obtained via Information Request IR0126 ([http://www.pbo-dpb.gc.ca/files/files/Response\\_IR0126\\_TBS\\_Mod\\_Sick\\_Leave\\_Benefits\\_EN.pdf](http://www.pbo-dpb.gc.ca/files/files/Response_IR0126_TBS_Mod_Sick_Leave_Benefits_EN.pdf)).

<sup>5</sup> Refer to Appendix A for a table of sick leave data used in this report.

<sup>6</sup> There are limited circumstances in which employees are replaced when taking a sick day. For example, Correctional Service Canada must maintain minimum staffing levels for the protection of the public, staff and inmates. These standards are contained in the *Commissioner's Directive 004 – Annex B* and may be found on Correctional Service Canada's website at: <http://www.csc-scc.gc.ca/text/plcy/cdshtm/004-cd-annexB-eng.shtml>.

<sup>7</sup> Information Request IR0146 to the Department of Fisheries and Oceans (DFO) regarding the Canadian Coast Guard ([http://www.pbo-dpb.gc.ca/files/files/Response\\_IR0146\\_DFO\\_coast\\_guard\\_officers\\_sick\\_leave\\_backfilling\\_EN.pdf](http://www.pbo-dpb.gc.ca/files/files/Response_IR0146_DFO_coast_guard_officers_sick_leave_backfilling_EN.pdf)).

<sup>8</sup> Information Request IR0147 to Correctional Service Canada regarding correctional officers ([http://www.pbo-dpb.gc.ca/files/files/Response\\_IR0147\\_CSC\\_corrections\\_officers\\_sick\\_leave\\_backfilling\\_EN.pdf](http://www.pbo-dpb.gc.ca/files/files/Response_IR0147_CSC_corrections_officers_sick_leave_backfilling_EN.pdf)).

<sup>9</sup> Information Request IR0145 to the Canada Border Services Agency regarding border services officers ([http://www.pbo-dpb.gc.ca/files/files/Response\\_IR0145\\_CBSA\\_border\\_guards\\_sick\\_leave\\_backfilling\\_EN.pdf](http://www.pbo-dpb.gc.ca/files/files/Response_IR0145_CBSA_border_guards_sick_leave_backfilling_EN.pdf)).

### What is “materiality”?

The handbook of the Canadian Institute of Chartered Accountants explains materiality as follows:

“Users are interested in information that may affect their decision making. Materiality is the term used to describe the significance of financial statement information to decision-makers. An item of information, or an aggregate of items, is material if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances.”<sup>10</sup>

PBO is concerned with two kinds of materiality: fiscal materiality and operational materiality.

Consistent with the Treasury Board Accounting Standard, PBO has adopted the definition of fiscal materiality to be an impact of greater than 0.5 per cent of direct program expenditures (approximately \$500 million).<sup>11</sup>

PBO considers an impact to be of operational materiality if the incremental cost exceeds 10 per cent of a department’s gross authorities (i.e., spending).<sup>12</sup>

## 2 Methodology

The annual portion of regular salary paid while an employee is on sick leave for a given department may be calculated as a share of employee wages based on a 261-day work year<sup>13</sup>, or:

$$SickSalary_{Dept} = \sum_i^n \frac{days_i \times wage_i}{261}$$

Where the inputs are:

$n$ : the number of full-time equivalent (FTE) positions in the department

$days_i$ : the number of paid sick days taken by employee “i”

$wage_i$ : the annual regular pay earned by employee “i”

PBO obtained sick leave data from the Treasury Board Secretariat (TBS) and salary data from the Receiver General.<sup>14</sup> The data provided were for 20 departments in the CPA for which TBS published data.

Since the data were already aggregated, it was not possible to estimate the cost on an employee-by-employee basis. Instead, PBO approximated the annual fiscal impact of sick leave as follows:

$$SickSalary_{Dept} = \frac{\overline{days_{Dept}}}{261} \times \sum wages_{Dept}$$

Where the inputs are:

$\overline{days_{Dept}}$ : the average number of paid sick leave days taken by employees of the department

$\sum wages_{Dept}$ : sum of all regular pay for the department

### 2.1 Cost of backfilling

Few CPA departments require replacements when an employee takes a paid sick day; thus, no additional costs are incurred by the government. Exceptions to this rule can be found in “operational” departments where the absence of service-oriented employees would have negative impact on the public and/or health and safety.

<sup>10</sup> Section 1000.17 of the CICA Handbook (Canadian Institute of Chartered Accountants, 2010).

<sup>11</sup> See <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12175&section=HTML>.

<sup>12</sup> See <http://www.iasplus.com/en/standards/ifrs/ifrs8>.

<sup>13</sup> Salary paid for overtime hours worked was not included in this calculation as sick leave can only be claimed for regular work hours.

<sup>14</sup> Supra note 5.

The method of estimating the incremental cost of backfilling is as follows:

$$\text{Replacement}_{\text{Dept}} = \sum_i^n \frac{\text{days}_i \times (\text{wage}_i + \text{premium}_i)}{261}$$

Where the inputs are:

$n$ : the number of full-time equivalent (FTE) positions in the department

$\text{days}_i$ : the number backfilled sick days taken by employee "i"

$\text{wage}_i$ : the annual regular pay earned by the employee filling in for employee "i"

$\text{premium}_i$ : the overtime or callback premium, if applicable

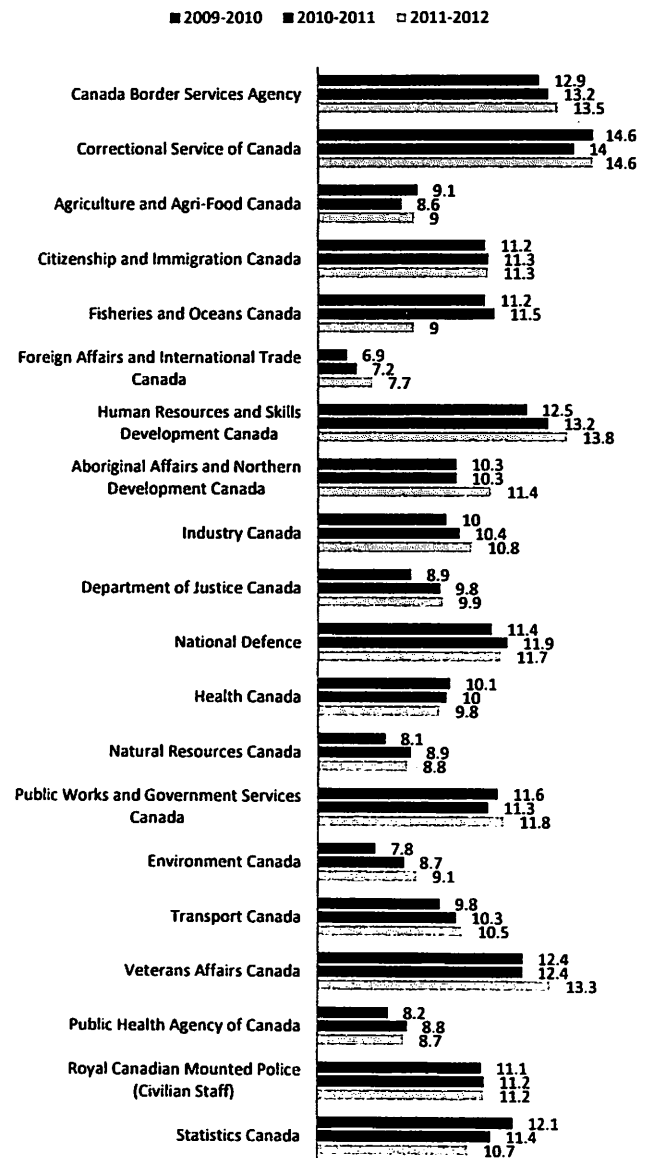
### 3 Analysis and Results

PBO previously estimated that the cost of wages paid while employees were on sick leave amounted to \$871 million in 2011-12.<sup>15</sup> However, the average number of paid sick days used by public servants varies significantly by department, suggesting that the significance of the share of wages will also vary by department.

For the period of interest, Correctional Service Canada (CSC), Human Resources and Skills Development Canada (HRSDC) and the Canada Border Services Agency (CBSA) consistently reported the highest average number of paid sick days per employee (Figure 2). It is interesting to note that all

these departments have staffing level requirements for operational staff.<sup>16</sup>

Figure 2 - Sick Days by Department



Source: Graphical representation of TBS data.

<sup>15</sup> Notes:

- Supra note 2.
- 2011-12 is the most recent year for which sick leave data are available.

<sup>16</sup> PBO sources.

### Materiality

Since paid sick leave is not an incremental cost, it cannot be fiscally or operationally material. However, the costs of backfilling of employees while on sick leave could be deemed material if the cost exceeded \$500 million government-wide or 10 per cent of a department's budget. PBO did not find evidence that either of these conditions was met in the years for which data were available.

### 3.1 Share of Total Expenditures

The incremental cost of the sick leave program administered by government departments is not material. To be an incremental cost, a sick day would need to be of greater cost than a day present at work. This is only the case when employees are replaced when sick, which is explained in the following section (Section 3.2).

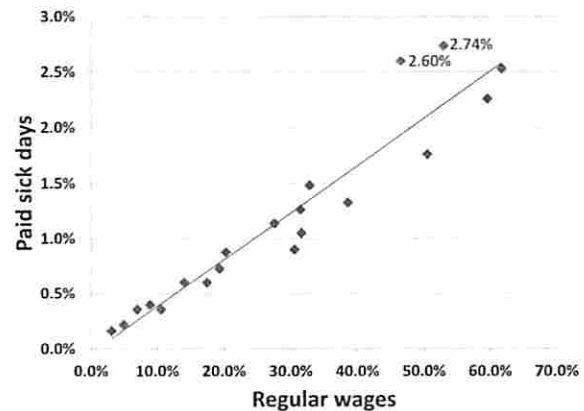
However, PBO undertook some analysis of sick leave as a share of departmental wages and total expenditures to identify the extent to which sick leave, as a share of total expenditures, varies among departments. The results are summarized in Appendix E.

Sick leave as a share of the wage bill is directly related to the average number of sick days taken by employees of a department. However, as illustrated in Figure 3, sick leave as a share of departmental expenditures is proportionate to the percentage of the departmental budget spent on wages. In other words, the more a department spends on wages, the more it spends on sick leave.

In general, the departments that fall above the line (in Figure 3) have a combination of a higher occurrence of sick leave and higher expenditure on wages when compared to those below the line. The two departments highlighted in Figure 3, CSC (2.60 per cent) and CBSA (2.74 per cent), may have higher occurrences of sick leave due to occupational risks not found in other departments (for example,

officers charged with guarding inmates in prisons as opposed to policy analysts working in offices).

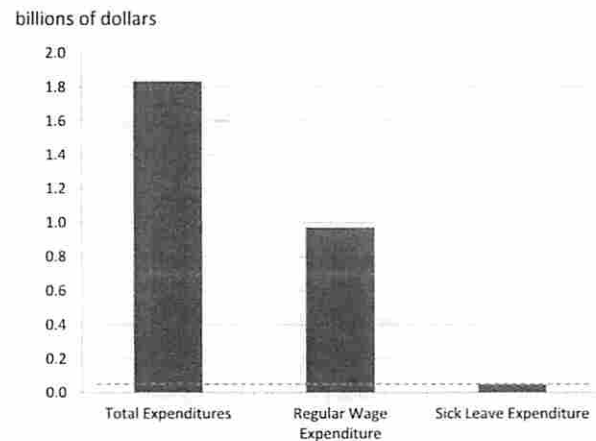
Figure 3 - Share of total expenditures, 2011-12



Source: PBO analysis.

Although sick leave makes up a larger share of expenditures for CSC and CBSA than for other departments, the costs are not material when compared to overall departmental expenditures. For CBSA, the \$50 million in sick leave costs represented only 2.74 per cent of the \$1.8 billion spent by the department in 2011-12 (Figure 4). For percentages, see Annex E.

Figure 4 - Total expenditures, regular wage expenditure, sick leave expenditure, CBSA 2011-12



Source: PBO analysis of TBS and RG data.

### 3.2 Cost of Backfilling

Most public servants are not backfilled, that is replaced, while on sick leave. However, employee groups such as Coast Guard crew, Border Services officers and Corrections officers, require replacements to ensure that operational, health and safety standards are met.<sup>17</sup>

PBO submitted a request to the departments overseeing each of these employee groups to obtain the cost of backfilling these groups during short-term sick leave.<sup>18</sup> While Fisheries and Oceans Canada (on behalf of the Coast Guard) and CSC provided their own estimates, CBSA indicated that it does not maintain data related to this cost.

#### 3.2.1 Coast Guard

The Coast Guard's MariTime system tracks sick leave for seagoing personnel, but does not enable the department to track when replacements were used to backfill these periods.

Consequently, the department provided an estimate of the salary spent during these periods, assuming that the cost of replacement would be approximately equivalent to the cost of sick leave, and noting the limitations of this assumption (Appendix C). This may be an overestimate of the cost of backfilling Coast Guard crew, as not all absences require backfilling.

However, since it does not appear to meet the threshold of materiality when compared with total

Coast Guard expenditures, PBO did not undertake an independent estimate of backfilling crew members.

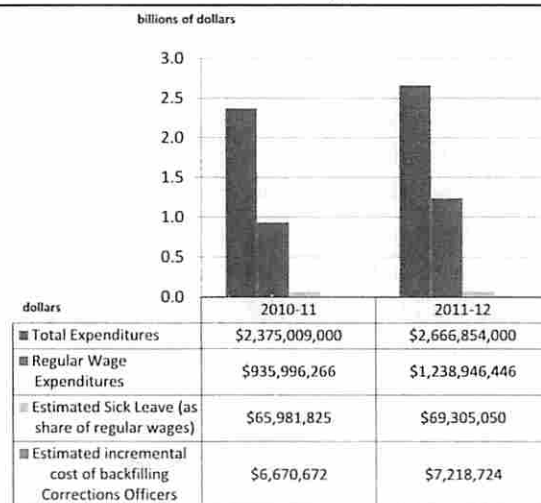
#### 3.2.2 Correctional Service Canada

CSC used data from its scheduling and deployment system to estimate the cost of backfilling sick leave.<sup>19</sup> The limitation of this estimate is that it is calculated using the average rates of pay for the Correctional officer group, which assumes that the use of sick days is consistent across levels.

PBO cannot validate this estimate. But it is satisfied that the methodology and assumptions documented by the department are appropriate given the data limitations.

Further, PBO did not undertake an independent estimate, as the department's estimate is not material (that is, it is less than 10 per cent or about \$260 million) when compared with departmental expenditures (Figure 5).

**Figure 5 - Comparison of CSC Expenditures and incremental cost of backfilling Corrections officers**



Source: PBO analysis of TBS, RG, and CSC data.

<sup>17</sup> This is not intended to be an exhaustive list of operational employee groups where backfilling is required, but illustrative of the financial implications of this practice where they do exist.

<sup>18</sup> Information requests and responses are available on the PBO website (<http://www.pbo-dpb.gc.ca/en/INFORMATION+REQUESTS>):

- Canada Border Services Agency IR0145
- Department of Fisheries and Oceans (Coast Guard) IR0146
- Correctional Service Canada IR0147.

<sup>19</sup> See Appendix D.

#### **4 Considerations for Parliamentarians**

Since the cost of sick leave is not an incremental cost, it cannot be fiscally or operationally material. Thus, PBO requested data from three departments expected to incur incremental costs for sick leave due to operational requirements to backfill staff.

Parliamentarians should take note that data quality and availability continue to limit PBO's ability to

provide Parliament with a fulsome analysis of the fiscal impact of sick leave in the public service.

Data provided to PBO by TBS are highly aggregated, while data obtained from departments have other inconsistencies which prevent reconciliation.

Parliamentarians should keep these limitations in mind when drawing conclusions based on analysis derived from these data sets.



## Appendix A Average Paid Sick Leave Days by Department as Reported by Treasury Board Secretariat<sup>20</sup>

Department	2009-2010	2010-2011	2011-2012
Canada Border Services Agency	12.9	13.2	13.5
Correctional Service of Canada	14.6	14	14.6
Agriculture and Agri-Food Canada	9.1	8.6	9
Citizenship and Immigration Canada	11.2	11.3	11.3
Fisheries and Oceans Canada	11.2	11.5	9
Foreign Affairs and International Trade Canada	6.9	7.2	7.7
Human Resources and Skills Development Canada	12.5	13.2	13.8
Aboriginal Affairs and Northern Development Canada	10.3	10.3	11.4
Industry Canada	10	10.4	10.8
Department of Justice Canada	8.9	9.8	9.9
National Defence	11.4	11.9	11.7
Health Canada	10.1	10	9.8
Natural Resources Canada	8.1	8.9	8.8
Public Works and Government Services Canada	11.6	11.3	11.8
Environment Canada	7.8	8.7	9.1
Transport Canada	9.8	10.3	10.5
Veterans Affairs Canada	12.4	12.4	13.3
Public Health Agency of Canada	8.2	8.8	8.7
Royal Canadian Mounted Police (Civilian Staff)	11.1	11.2	11.2
Statistics Canada	12.1	11.4	10.7

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<sup>20</sup> Data was retrieved from the Treasury Board Secretariat's government internet site (<http://www.tbs-sct.gc.ca/res/stats/slu-ucm-eng.asp>) on January 8, 2014.

## Appendix B CBSA Response to IR0145



USP000 B00001 Agence des Services  
Services Agency Immatriculés du Canada

President President

Ottawa, Canada  
K1A 0J8

Mr. Jean-Denis Fréchette  
Parliamentary Budget Officer  
Library of Parliament  
Parliament Buildings  
Ottawa, Ontario  
K1A 0A9

APR 11 2016

Dear Mr. Fréchette:

Thank you for your correspondence of March 26, 2014. Information Request IR0145, which sought "the salary dollars for the last five years to call in replacements for Border Services Officers who called in sick."

The Canada Border Services Agency does not maintain data on the costs related to replacements for Border Services Officer (BSO) when these individuals are absent due to sick leave. As such, we are unable to provide a response to your request.

Please do not hesitate to contact me if you or your staff have any questions or concerns.

Yours sincerely,

cc. Yves Giroux, Acting Assistant Secretary to the Cabinet, Liaison Secretariat for  
Macroeconomic Policy, Privy Council Office

Canada

## Appendix C Coast Guard Response to IR0146



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

Deputy Minister

Sous-ministre

APR 10 2014

Mr. Jean-Denis Fréchette  
Parliamentary Budget Officer  
Library of Parliament  
Parliament Buildings  
Ottawa, ON  
K1A 0A9

Parliamentary Budget Officer

APR 11 2014

Directeur parlementaire  
du budget

Dear Mr. Fréchette:

Your letter dated March 26, 2014, regarding Information Request IR0146, seeks information on the salary dollars for the last five fiscal years to call in replacements for Coast Guard officers who have called in sick.

As clarified with your office, your request for information applies to all seagoing personnel and is not limited to officers. In this regard, the salary dollars reported in Table 1 of Annex A represent the total salary dollars paid to seagoing personnel while they were on sick leave.

The Canadian Coast Guard tracks sick leave for seagoing personnel using an internal database known as the MariTime system. Whereas the system is functional for managing the crewing of CCG's vessels, its reporting capabilities are limited.

When CCG seagoing personnel take sick leave, a determination is made as to whether to backfill the position with replacement personnel based on the criticality of the position. In some cases, the position is not backfilled. Unfortunately, the MariTime system is unable to match, on a "one-to-one" basis, the number of instances in which seagoing personnel on sick leave were backfilled with relief personnel. As a result, it is not possible to isolate the salary dollars paid to replacement personnel for crew members on sick leave.

The Department has noted the need to modernize our human resources databases and information systems to improve their search, filter, and data integration capabilities.

Should you or a member of your team require clarification on the attached submission, please feel free to contact Mr. E. Wade Spurrell, Director General, Operations at 613-990-9172.

Yours sincerely,

Matthew King  
Deputy Minister  
Attachment (1), Annex "A"

## **ANNEX "A"**

It is important to note the following limitations within the response:

Coast Guard is unable to quickly identify periods of sick leave that did not require relief personnel. A great deal of historical research would need to be carried out to accurately reflect the actual sick leave "replacement" salary costs.

The data in Table 1, under the column labelled "Paid Sick Leave Base Salary Costs" represents salary dollars associated with any on-duty sick time taken by seagoing personnel. Using an assumption that all sick leave utilized required relief personnel, the values in this column subsequently represent the salary costs for sick leave replacements.

**TABLE 1**

<b>Fiscal Year</b>	<b>Total Base Salary Seagoing Personnel</b>	<b>Paid Sick Leave Base Salary Costs</b>	<b>Paid Sick Leave as a Percentage of Total Base Salary</b>
2008 / 2009	\$128,006,330	\$6,790,334	5.3%
2009 / 2010	\$129,257,306	\$7,633,096	5.9%
2010 / 2011	\$131,033,904	\$7,856,582	6.0%
2011 / 2012	\$133,281,035	\$8,363,825	6.3%
2012 / 2013	\$134,912,332	\$8,457,642	6.3%
2013 / Feb 2014 *	\$135,536,715	\$6,679,646	4.9%

- \* Note that all 2013 / Feb 2014 fiscal year values will increase once outstanding timesheets for the fiscal year have been entered into the MarTime System.

## Appendix D Correctional Services Response to IR0147



Correctional Service  
Canada

Service correctionnel  
Canada

Commissioner  
Ottawa, Canada  
K1A 0P9

Commissaire

APR 11 2014

Your file Votre référence

Our file Notre référence

Jean-Denis Fréchette  
Parliamentary Budget Officer  
Library of Parliament  
Parliament Buildings  
Ottawa, Ontario  
K1A0A9

Dear Mr. Fréchette:

Thank you for your letter of March 26, 2014, in which you requested information pertaining to the salary dollars paid by the Correctional Service of Canada (CSC) for the last five fiscal years to call in replacements for correctional officers (CX) who have called in sick.

With the implementation of its Scheduling & Deployment System in 2009, CSC is able to estimate the costs to call in replacements for correctional officers who have called in sick as follows for the last 5 years:

2009-10:	\$3,022,422 *
2010-11:	\$6,670,672
2011-12:	\$7,218,724
2012-13:	\$6,404,005
2013-14:	\$6,523,065

Please note that these amounts are estimations based on the average rates of pay for the CX group for the years in question and based on the appropriate identification of call-in replacements for vacancies resulting of sick leave with pay usage within the System. Also, the amount for 2009-10 only accounts for 6 months of data as the Scheduling & Deployment System was implemented mid-year.

I trust that this information responds to your question.

Amy Kelly, A/Commissioner CSC

cc.: Yves Giroux, Acting Assistant Secretary to the Cabinet, Liaison Secretariat for Macroeconomic Policy, Privy Council Office

Canada

## Appendix E Summary of Results (2011-12)

Organization	Paid Sick Days	as % of Regular Wage Bill	as % of Total Expenditures
Canada Border Services Agency	13.5	5.2%	2.7%
Correctional Service	14.6	5.6%	2.6%
Agriculture and Agri-Food	9	3.4%	0.6%
Citizenship and Immigration	11.3	4.3%	0.9%
Fisheries and Oceans	9	3.4%	1.3%
Foreign Affairs, Trade and Development	7.7	3.0%	0.9%
Human Resources and Skills Development	13.8	5.3%	0.2%
Indian Affairs and Northern Development	11.4	4.4%	0.2%
Industry	10.8	4.1%	1.1%
Justice	9.9	3.8%	2.3%
National Defence	11.7	4.5%	0.4%
Health	9.8	3.8%	0.7%
Natural Resources	8.8	3.4%	0.4%
Public Works and Government Services	11.8	4.5%	1.5%
Environment	9.1	3.5%	1.8%
Transport	10.5	4.0%	1.3%
Veterans Affairs	13.3	5.1%	0.4%
Public Health Agency of Canada	8.7	3.3%	1.1%
Royal Canadian Mounted Police	11.2	4.3%	0.6%
Statistics Canada	10.7	4.1%	2.5%

**APPENDIX D: Communiqué Sent From Treasury Board to Employees of  
Correctional Services Canada**

**Workplace Wellness and Productivity Strategy**

**[Apr 22,2014]**

**To all employees,**

**The Government of Canada is committed to improving the wellness and well-being of its employees. In its Economic Action Plan 2014, the Government made it a policy priority to modernize the disability and sick leave management system.**

**To deliver on its commitment, the Government is introducing the Workplace Wellness and Productivity Strategy, which will include a new short-term disability plan to ensure seamless coverage between sick leave and long-term disability benefits.**

**All employees are invited to consult the Government of Canada's Workplace Wellness and Productivity Strategy on the Treasury Board Secretariat website, where you can also find resources to assist managers and employees in understanding and managing disability management cases across the Government of Canada**

**This new strategy will provide fair and comprehensive sickness and disability coverage for all employees, regardless of tenure or medical history.**

**The current approach to managing disability and sick leave is out of step with leading practices and has a number of shortcomings. The Government is among the remaining few large employers that does not offer formal short-term disability coverage to its employees. This places many at risk of income loss during prolonged periods of illness. Twenty-five percent of employees have less than 10 days of banked sick leave and 65 percent of employees do not have sufficient accumulated sick days required under the current system to cover the 13-week period for long-term disability eligibility. As well, lack of active case management hinders successful workplace reintegration when employees are ready to return to work.**

**The new strategy will provide you with the support you need in times of illness or injury, including adequate income protection and timely access to case management, rehabilitation and return to work services.**

**With this transformed approach to the management of illness and disability, we hope to improve the health and well-being of all employees. We know that workplace wellness and productivity go hand in hand.**

## **APPENDIX E**





Public  
Service  
Labour  
Relations  
Board

Commission des  
relations de  
travail dans la  
fonction  
publique



**Form 16**  
(Section 57)

**COMPLAINT UNDER SECTION 190 OF THE ACT**

*Public Service Labour Relations Act*

**NOTICE:** The original and one copy of this complaint must be filed with the Executive Director of the Board.

**1. Complainant information:**

☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms.

Last or family name (print in block letters): PUBLIC SERVICE ALLIANCE OF CANADA

First name (print in block letters):

Middle name(s) (print in block letters):

ATTN: Krista Devine

Mailing address:

Apartment (if applicable): \_\_\_\_\_ Number and street: 233 Gilmour Street

City: Ottawa Province or Territory: Ontario Postal code: K2P 0P1

Telephone numbers (where we can reach you):

Fax numbers (where we can reach you):

Home: (\_\_\_\_) \_\_\_\_\_

Home: (\_\_\_\_) \_\_\_\_\_

Office: (\_\_\_\_) \_\_\_\_\_

Office: (\_\_\_\_) \_\_\_\_\_

E-mail address: \_\_\_\_\_

Name of authorized representative (if applicable): ANDREW RAVEN, Raven, Cameron, Ballantyne & Yazbeck LLP

Mailing address (if different from above):

Apartment (if applicable): \_\_\_\_\_ Number and street: 1600-220 Laurier Avenue West

City: Ottawa Province or Territory: Ontario Postal code: K1P 5Z9

Telephone number: ( 613 ) 567-2902 Fax number: ( 613 ) 567-2921

E-mail address: araven@ravenlaw.com

**2. Respondent information:**

Name: Her Majesty the Queen in Right of Canada as Represented by Treasury Board

Mailing address:

Apartment (if applicable): \_\_\_\_\_ Number and street: 140 O'Connor Street

City: Ottawa Province or Territory: Ontario Postal code: K1A0R5

Where information on more than one person is required in a section or the space provided is not sufficient, please attach additional pages of same-sized paper.

**3. Paragraph of the *Public Service Labour Relations Act* on which the complaint is based:**

- ☐ 190(1)(a) Failure to comply with section 56 (duty to observe terms and conditions).
- ☒ 190(1)(b) Failure to comply with section 106 (duty to bargain in good faith).
- ☒ 190(1)(c) Failure to comply with section 107 (duty to observe terms and conditions).
- ☐ 190(1)(d) Failure to comply with subsection 110(3) (duty to bargain in good faith).
- ☐ 190(1)(e) Failure to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award).
- ☐ 190(1)(f) Failure to comply with section 132 (duty to observe terms and conditions).
- ☒ 190(1)(g) Unfair labour practice within the meaning of section 185.

**4. Concise statement of each act, omission or other matter complained of, including dates and names of persons involved:**

~~See attached Schedule "A".~~

**5. Date on which the complainant knew of the act, omission or other matter giving rise to the complaint:**

25/05/2014

(dd/mm/yyyy)

*Complete sections 6 and 7 only if the complaint alleges an unfair labour practice prohibited by paragraph 188(b) or (c) of the Public Service Labour Relations Act and if the employee organization has established a grievance or appeal procedure.*

**6. Date on which a grievance or appeal was presented in accordance with any procedure that has been established by the employee organization:**

n/a

(dd/mm/yyyy)

7. Date on which the employee organization has provided the complainant with a copy of a decision to the grievance or appeal referred to in section 6:

n/a  
(dd/mm/yyyy)

8. Steps that have been taken by or on behalf of the complainant for the resolution of the action, omission or other matter giving rise to the complaint:

~~See attached Schedule "A".~~

9. Corrective action sought under subsection 192(1) of the *Public Service Labour Relations Act*:

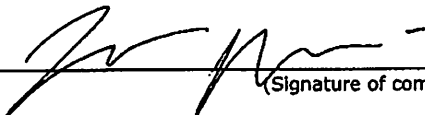
~~See attached Schedule "A".~~

10. Other matters relevant to the complaint:

See attached Schedule "A"

I, the undersigned, (duly authorized representative of the complainant,) hereby file this *Complaint under Section 190 of the Act*.

Date: 07/07/2014  
(dd/mm/yyyy)

 per Andrew Rauer  
(Signature of complainant or authorized representative)

(Office held with the complainant, where applicable)

**SCHEDULE "A"**  
**BEFORE THE PUBLIC SERVICE LABOUR RELATIONS BOARD**

**B E T W E E N:**

**PUBLIC SERVICE ALLIANCE OF CANADA**

(the "Complainant")

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY TREASURY  
BOARD**

(the "Respondent")

---

**COMPLAINT**

---

**OVERVIEW**

1. The Complainant maintains that the Respondent, Her Majesty the Queen in Right of Canada as represented by Treasury Board ("Employer") interfered with the administration of an employee organization and the representation of employees in an employee organization by communicating false and misleading information to employees regarding its Workplace Wellness and Productivity Strategy, contrary to section 186 of the *Public Service Labour Relations Act* ("PSLRA"). Moreover, the Employer's communications and its implementation of the Strategy constitute a violation of the duty to bargain in good faith pursuant to section 106 of the *PSLRA*, and a violation of the statutory freeze pursuant to section 107 of the *PSLRA*.

2. Paragraph 186(1)(a) of the *PSLRA* provides as follows:

**Unfair labour practices — employer**

186. (1) Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall

(a) participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization

3. Section 106 of the PSLRA provides:

**Duty to bargain in good faith**

106. After the notice to bargain collectively is given, the bargaining agent and the employer must, without delay, and in any case within 20 days after the notice is given unless the parties otherwise agree,

(a) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and

(b) make every reasonable effort to enter into a collective agreement.

4. Section 107 of the PSLRA provides:

**Duty to observe terms and conditions**

107. Unless the parties otherwise agree, and subject to subsection 125(1), after the notice to bargain collectively is given, each term and condition of employment applicable to the employees in the bargaining unit to which the notice relates that may be included in a collective agreement, and that is in force on the day on which the notice is given, is continued in force and must be observed by the employer, the bargaining agent for the bargaining unit and the employees in the bargaining unit until a collective agreement is entered into in respect of that term or condition or

(a) if the process for the resolution of a dispute is arbitration, an arbitral award is rendered; or

(b) if the process for the resolution of a dispute is conciliation, a strike could be declared or authorized without contravening subsection 194(1).

5. This complaint is brought pursuant to section 190 of the *PSLRA*.

**PARTICULARS**

6. The Complainant, Public Service Alliance of Canada ("PSAC"), is the certified bargaining agent for employees working in various departments of the Employer, in the FB, PA, SV, TC, and EB bargaining units (the "Bargaining Units"). Between February 28, 2014, and April 16, 2014, Notice to Bargain was served by the Employer in respect of all of these Bargaining Units. Attached as **Appendix "A"** are copies of the Notices to Bargain.

7. On or around May 25, 2014, the Employer sent out mass email communications to employees in the core public administration, including employees in the Bargaining Units. These emails announced the government's introduction of the Workplace Wellness and Productivity Strategy ("Strategy"). Attached as **Appendix "B"** are examples of these email communications. An example of the content of these emails is as follows:

This new strategy will provide fair and comprehensive sickness and disability coverage for all employees, regardless of tenure or medical history, and will include a new short-term disability plan to ensure seamless coverage between sick leave and long-term disability benefits. Active case management will also be employed to facilitate successful workplace reintegration when employees are ready to return to work. [Emphasis added.]

8. Some of these emails contained a link to a website providing further information about the Strategy. That website listed the various components of the Strategy, including: a number of sick days to be provided annually; a short-term disability plan; and a retendered long-term disability plan. A considerable amount of detail regarding the terms of the short-term disability plan was included. Attached as **Appendix "C"** is a copy of the website.

9. These emails and the website clearly stated that the Employer is in the process of implementing the Strategy, and that this Strategy will include short-term disability benefits, thereby giving the impression that these terms and conditions of employment are a *fait accompli* rather than bargaining proposals.

10. By letter dated June 9, 2014, the Complainant wrote to the Respondent and expressed its position that these communications were false and highly misleading to employees, and that they constituted a violation of the duty to bargain in good faith, interference with PSAC's representation of its members, and a violation of the statutory freeze. Attached as **Appendix "D"** is a copy of the letter dated June 9, 2014. The Complainant has not received any response to its letter.

11. The Complainant maintains that the Respondent's conduct as described in the preceding paragraphs constitutes a violation of the duty to bargain in good faith contrary to section 106 of the *PSLRA*. The Employer bypassed PSAC and issued mass email communications directly to employees, attempting to exert undue influence on the bargaining process. The Employer has improperly promised employees the introduction of

---

the Strategy, and particularly, a new short-term disability benefit, before any of these matters have been the subject of bargaining. These emails improperly lead employees to believe that the content of the Strategy, including the introduction of short-term disability benefits, are not the proper subject of bargaining but rather can be unilaterally implemented by the Employer.

12. It is the position of the Complainant that this conduct also constitutes interference within the meaning of section 186 of the *PSLRA*. The Employer's false and improper communication to employees was clearly intended to damage the Complainant's ability to represent its members at the bargaining table, by circumventing PSAC and making a promise directly to employees.

13. Finally, it is the Complainant's position that the Employer's unilateral introduction of the Strategy constitutes a violation of the statutory freeze on terms and conditions of the Bargaining Units, pursuant to section 107 of the *PSLRA*. All aspects of the Strategy constitutes terms and conditions that may be included in a collective agreement, and therefore it is in violation of the statutory freeze for the Employer to implement the Strategy in respect of the Bargaining Units, since Notice to Bargain has been served.

## **REMEDY**

14. The Complainant seeks the following remedies pursuant to the Board's powers under section 192 of the *PSLRA* and the Board's general power under section 36 of the *PSLRA* to issue Orders to attain the objectives of the Act:

- a) An expedited hearing before the Board;
- b) An Order granting interim relief, including that the Employer immediately cease all steps to implement the Strategy, pending the outcome of the complaint;
- c) A declaration that the Employer has acted in violation of sections 106, 107 and 186 of the *PSLRA*;

- 
- d) An Order that the Employer rescind all misleading communications, and issue a communication affirming its obligation to bargain in good faith over the introduction of the Strategy, including short-term disability benefits;
  - e) An Order that the parties bargain in good faith regarding the contents of the Strategy;
  - f) An Order that the Employer comply with the statutory freeze;
  - g) An Order requiring the Employer to post the decision in a prominent location in all workplaces in which employees in the Bargaining Units work; and,
  - h) Such further Order or relief as counsel may request and that the Board may permit.

Dated at Ottawa, this       day of July, 2014.



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## **APPENDIX "A"**



Treasury Board of Canada  
Secrétariat

Secrétariat du Conseil du Trésor  
du Canada

Ottawa, Canada.  
K1A 0R6

February 24, 2014

Our File: 8954-007-003

Mrs. Robyn Benson  
National President  
Public Service Alliance of Canada  
233 Gilmour Street  
Ottawa, ON  
K2P 0P1

Dear Mrs. Benson:

**Re: Notice to Bargain  
Program and Administrative Services (PA) Group**

In accordance with section 105 of the *Public Service Labour Relations Act*, the Treasury Board of Canada Secretariat serves notice to bargain for the Program and Administrative Services (PA) Group.

The negotiator for this group is John Park, who can be reached at (613) 952-3177, or by email at [John.Park@tbs-sct.gc.ca](mailto:John.Park@tbs-sct.gc.ca).

Yours sincerely,

/s/ Barry Fennessy  
Senior Director  
Core Public Administration  
Compensation Management  
Compensation and Labour Relations  
Office of the Chief Human  
Resources Officer

c.c.: John Park, TBS  
David Paul Olsen, PSLRB

Canada



Treasury Board of Canada  
Secrétariat

Secrétariat du Conseil du Trésor  
du Canada

Ottawa, Canada  
K1A 0R5

February 24, 2014

Our File: 8954-009-003

Mrs. Robyn Benson  
National President  
Public Service Alliance of Canada  
233 Gilmour Street  
Ottawa, ON  
K2P 0P1

Dear Mrs. Benson:

**Re: Notice to Bargain  
Technical Services (TC) Group**

In accordance with Section 105 of the *Public Service Labour Relations Act*, the Treasury Board of Canada Secretariat serves notice to bargain for the Technical Services (TC) Group.

The negotiator for this group is Josée Lefebvre, who can be reached at (613) 954-1134, or by email at [JoseeN.Lefebvre@tbs-sct.gc.ca](mailto:JoseeN.Lefebvre@tbs-sct.gc.ca).

Yours sincerely,

for Barry Fennessy  
Senior Director  
Core Public Administration  
Compensation Management  
Compensation and Labour Relations  
Office of the Chief Human  
Resources Officer

c.c.: Josée Lefebvre, TBS  
David Paul Olsen, PSIRB

Canada



Treasury Board of Canada  
Secrétariat

Secrétariat du Conseil du Trésor  
du Canada

Ottawa, Canada  
K1A 0H5

February 28, 2014

Our File: 8954-011-003

Mrs. Robyn Benson  
National President  
Public Service Alliance of Canada  
233 Gilmour Street  
Ottawa, ON  
K2P 0P1

Dear Mrs. Benson:

**Re: Notice to Bargain  
Education and Library Science (EB) group**

In accordance with section 105 of the *Public Service Labour Relations Act*, the Treasury Board of Canada Secretariat serves notice to bargain for the Education and Library Science (EB) group.

The negotiator for this group is Karine Renoux, who can be reached at (613) 957-3782, or by email at [Karine.Renoux@tbs-sct.gc.ca](mailto:Karine.Renoux@tbs-sct.gc.ca).

Yours sincerely,

*for*

Barry Fennessy  
Senior Director  
Core Public Administration  
Compensation Management  
Compensation and Labour Relations  
Office of the Chief Human  
Resources Officer

c.c.: Karine Renoux, TBS  
Christine Okrainec, TBS  
David Paul Olsen, PSLRB

Canada

04/04/2014 FRI 11:19 FAX

003/003



Treasury Board of Canada  
Secrétariat

Secrétariat du Conseil du Trésor  
du Canada

Ottawa, Canada  
K1A 0R5

April 4, 2014

Our File: 8954-008-003

Ms. Robyn Benson  
National President  
Public Service Alliance of Canada  
233 Gilmour Street  
Ottawa, ON  
K2P 0P1

Dear Ms. Benson:

**Re: Notice to Bargain  
Operational Services (SV) Group**

In accordance with Section 105 of the *Public Service Labour Relations Act*, the Treasury Board of Canada Secretariat serves notice to bargain for the Operational Services (SV) group.

The negotiator for this group is Dennis Duggan, who can be reached at (613) 952-2958, or by email at [Dennis.Duggan@tbs-sct.gc.ca](mailto:Dennis.Duggan@tbs-sct.gc.ca).

Yours sincerely,

400/ Barry Fennessy  
Senior Director  
Core Public Administration  
Compensation Management  
Compensation and Labour Relations  
Office of the Chief Human  
Resources Officer

c.c.: Dennis Duggan, TBS  
Patricia Phee, TBS  
David Paul Olsen, PSLRB

Canada

04/04/2014 FRI 11:19 FAX

002/003



Public Service Labour  
Relations Board

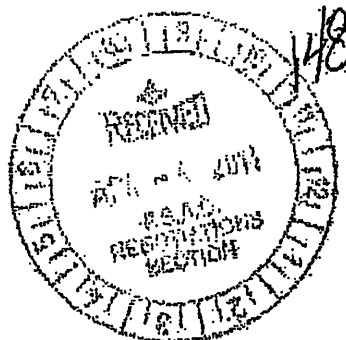
Commission des relations de travail  
dans la fonction publique

BY FAX

Reference No / N° de référence  
582-02-Q1  
XR: 142-2-338

April 4, 2014

Ms. Robyn Benson  
National President  
Public Service Alliance of Canada  
233 Gilmour Street  
Ottawa ON K2P 0P1



Dear Ms. Benson:

Re: Notice to Bargain –  
Operational Services (SV) Group

Enclosed, is a copy of a letter from the Treasury Board of Canada dated April 4, 2014, consisting of a Notice to Bargain served to the Public Service Alliance of Canada in respect of all employees of the Employer in the Operational Services (SV) bargaining unit pursuant to section 105 of the Public Service Labour Relations Act.

Sincerely yours,

Roxanne St. Jean  
Dispute Resolution Services Coordinator  
(613) 993-9157

c.c.: G. Grenier

P.O. Box 1526, Station "B"  
Ottawa ON K1P 5V2  
Canada

General Enquiries/Renseignements  
Facsimile/Télécopieur  
E-mail/Courriel  
Web Site/Site Web

(613) 990-1800  
(613) 990-1849  
mail.courrier@pslrb-crtfp.gc.ca  
www.pslrb-crtfp.gc.ca

C.P. 1526, Succursale "B"  
Ottawa ON K1P 5V2  
Canada

04/04/2014 FRI 11:19 FAX

001/003



**PUBLIC SERVICE LABOUR RELATIONS BOARD  
COMMISSION DES RELATIONS DE TRAVAIL  
DANS LA FONCTION PUBLIQUE**

**DISPUTE RESOLUTION SERVICES  
SERVICES DE RÈGLEMENT DES CONFLITS**

**FAX NUMBER/N° DU TÉLÉCOPIEUR**



**(613) 990-6685**

**To:  
À:**

R. B...

**Date:** 04.04.14.

**Fax No./N° du télécopieur:**

613-236-3289

**Pages to be transmitted/  
Nombre de pages à transmettre:**

**From:  
De:**

Roxanne St. Jean

**MESSAGE:**

Notice to Bargain  
TD & PSAC.  
SIL Group.

**Fax Operator/Opératrice du télécopieur:** (613) 990 - 6685



Treasury Board of Canada  
Secrétariat

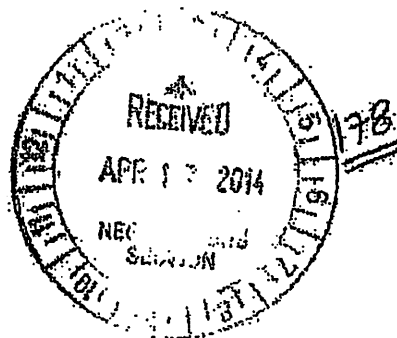
Secrétariat du Conseil du Trésor  
du Canada

Ottawa, Canada  
K1A 0P8

April 16, 2014

Our File: 8954-038-003

Ms. Robyn Benson  
National President  
Public Service Alliance of Canada  
233 Gilmour Street  
Ottawa, ON  
K2P 0P1



Dear Ms. Benson:

**Re: Notice to Bargain  
Border Services (FB) Group**

In accordance with Section 105 of the *Public Service Labour Relations Act*, the Treasury Board of Canada Secretariat serves notice to bargain for the Border Services (FB) group.

The negotiator for this group is Ted Leindecker, who can be reached at (613) 952-3124, or by email at [Ted.Leindecker@tbs-sct.gc.ca](mailto:Ted.Leindecker@tbs-sct.gc.ca).

Yours sincerely,

Barry Fennelly  
Senior Director  
Core Public Administration  
Compensation Management  
Compensation and Labour Relations  
Office of the Chief Human  
Resources Officer

c.c.: Ted Leindecker, TBS  
Martine Sigouin, TBS  
David Paul Olsen, PSLRB

Canada



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## **APPENDIX "B"**

**Subject: Fw: Workplace Wellness and Productivity Strategy / Stratégie de mieux-être au travail et de productivité**

From: Deputy Ministers\_Communications\_ Sous-ministres/GEN/HC-SC/GC/CA  
To:  
Date: 2014-05-22 03:51 PM  
Subject: Workplace Wellness and Productivity Strategy / Stratégie de mieux-être au travail et de productivité

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*Le français suit.*

Our employees are Health Canada's greatest assets and we would like to share information on the Government of Canada's Workplace Wellness and Productivity Strategy in recognition of this fact and in the spirit of transparency and openness.

This new strategy will provide fair and comprehensive sickness and disability coverage for all employees, regardless of tenure or medical history, and will include a new short-term disability plan to ensure seamless coverage between sick leave and long-term disability benefits. Active case management will also be employed to facilitate successful workplace reintegration when employees are ready to return to work.

The Government was among the remaining few large employers that did not offer formal short-term disability coverage to its employees. This placed many at risk of income loss during prolonged periods of illness. Within Health Canada, 30% of employees have less than 20 days of banked sick leave. Overall, 63% of employees do not currently have sufficient accumulated sick days to cover the 13-week period for long-term disability eligibility under the previous system. The new strategy will provide you with the support you need in times of illness or injury, including adequate income protection and timely access to case management, rehabilitation and return to work services.

At Health Canada, we have always understood that workplace wellness and productivity go hand in hand. You may have seen the recent message from Stephen Black, Director General, Human Resources, announcing the launch of Promotion of Good Practices in Leave Management for Reasons of Illness and Injury, a new online tool for employees and managers. We invite you to use this tool to help build an environment where everyone feels safe and comfortable. This is just one of the ways we are working to improve the health and well-being of all employees by aligning our organization's practices with the broader goals and guidelines of the Government's overall strategy. More information on services available to Health Canada employees is available in the My Workplace section of the Intranet.

These are significant changes for everyone and we understand that you may have a number of questions regarding precisely how the new strategy will be implemented and exactly what effect it will have on your leave entitlements. We remain absolutely committed to keeping you fully informed as the implementation process continues. In the meantime, we invite you to consult the Government of Canada's Workplace Wellness and Productivity Strategy. For more information, please visit the Treasury Board Secretariat website, where you can also find a variety of resources to assist managers and employees in understanding and managing disability management cases across the Government of Canada.

George Da Pont

Paul Glover

Deputy Minister

Associate Deputy Minister

Nous reconnaissons que les employés constituent le principal atout de Santé Canada et attachons une grande importance à la transparence et à l'ouverture. C'est pourquoi nous désirons faire le point sur la Stratégie de mieux-être au travail et de productivité du gouvernement du Canada

La nouvelle stratégie garantira une protection complète et équitable en cas de maladie ou d'invalidité à tous les employés, peu importe la durée de leur emploi ou leurs antécédents médicaux, et comprendra un nouveau régime d'assurance-invalidité de courte durée visant à assurer une protection ininterrompue entre les congés de maladie et les prestations d'invalidité de longue durée. Par ailleurs, une gestion active des cas facilitera la réintégration des employés prêts à retourner au travail.

L'administration fédérale était l'un des quelques grands employeurs qui n'offrent toujours pas de régime d'invalidité de courte durée à leurs employés. De nombreux fonctionnaires risquaient donc de perdre leur revenu durant de longues périodes de maladie. À Santé Canada, 30 % des employés ont accumulé moins de 20 jours de congé de maladie. En tout, 63 % des employés n'ont pas accumulé suffisamment de jours de congé de maladie pour couvrir la période de 13 semaines prévue par l'ancien système pour avoir droit aux prestations d'invalidité de longue durée. La nouvelle stratégie vous offrira le soutien dont vous avez besoin en cas de maladie ou de blessure, y compris une protection adéquate du revenu et un accès rapide à des services de gestion des cas, de réadaptation et de retour au travail.

À Santé Canada, nous avons toujours su que le mieux-être au travail et la productivité allaient de pair. Vous avez peut-être lu le récent message de Stephen Black, directeur général des Ressources humaines, annonçant la publication du nouveau guide en ligne à l'intention des employés et des gestionnaires, intitulé Promotion des bonnes pratiques de gestion des congés pour cause de maladie ou de blessure. Nous vous invitons à le consulter pour créer un milieu où chacun se sent en sécurité et à l'aise. Ce n'est qu'un des moyens dont nous tentons d'améliorer la santé et le bien-être de tous les employés, en faisant concorder les pratiques de l'organisation avec les buts généraux et les lignes directrices de la stratégie globale du gouvernement. Pour en savoir plus sur les services offerts aux employés de Santé Canada, veuillez consulter la section Mon milieu de travail de l'intranet.

Il s'agit de changements importants qui touchent tout le monde, et nous savons que vous pourriez avoir des questions précises sur la façon dont la nouvelle stratégie sera mise en œuvre et les répercussions qu'elle aura sur vos crédits de congé. Nous sommes déterminés à vous tenir au courant jusqu'à ce que le processus de mise en œuvre soit terminé. D'ici là, nous vous invitons à prendre connaissance de la Stratégie de mieux-être au travail et de productivité du gouvernement du Canada. Pour en savoir plus, veuillez consulter le site Web du Secrétariat du Conseil du Trésor, qui contient diverses ressources sur la gestion des cas d'incapacité dans l'administration fédérale à l'intention des gestionnaires et des employés.

George Da Pont  
Sous-ministre

Paul Glover  
Sous-ministre délégué

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> From: Keane, Deirdre - HRB/DRH

> Sent: Monday, May 26, 2014 12:56 PM

> To: \*STC -All STC Staff (Ottawa); \*STC -All Region Staff

> Subject: Workplace Wellness and Productivity Strategy / Stratégie du mieux-être et de la productivité au travail

>

>

> Le français suit l'anglais.

>

> In its Economic Action Plan 2014 (Network B), the Government of Canada made it a policy priority to modernize the disability and sick-leave management system. To deliver on its commitment, the government is introducing the Workplace Wellness and Productivity Strategy (Network B), which will include a new short-term disability plan to ensure seamless coverage between sick leave and long-term disability benefits.

>

> The government is among the few remaining large employers that does not offer formal short-term disability coverage to its employees. This new strategy will provide fair and comprehensive sickness and disability coverage for all employees, regardless of tenure or medical history. It is intended to provide all employees with the support they need in times of illness or injury, including adequate income protection and timely access to case management, rehabilitation and return-to-work services.

>

> Sick-leave-related provisions—yearly allotment of sick leave days and treatment of sick leave banks—will be negotiated during the next round of collective bargaining.

>

> We will ensure that as more information is released, it will be made available on the ICN.

>

>

>

> Dans son Plan d'action économique de 2014 (réseau B), le gouvernement du Canada a fait de la modernisation du système de gestion des congés d'invalidité et de maladie une priorité stratégique. Pour donner suite à cet engagement, le gouvernement instaure la Stratégie du mieux-être et de la productivité au travail (réseau B), qui comprendra un nouveau régime d'invalidité de courte durée visant à assurer une protection ininterrompue entre les congés de maladie et les prestations d'invalidité de longue durée.

>

> Le gouvernement demeure l'un des rares grands employeurs qui n'offrent pas d'assurance-invalidité officielle de courte durée à ses employés. Cette nouvelle stratégie offrira une protection équitable et exhaustive en cas de maladie et d'invalidité à tous les employés, peu importe la durée de leur emploi ou leurs antécédents médicaux. Elle fournira aux employés le soutien dont ils ont besoin en cas de maladie ou de blessure, notamment la protection adéquate du revenu et l'accès rapide aux services de gestion des cas, de réadaptation et de retour au travail.

>

> Les dispositions relatives aux congés de maladie — l'attribution annuelle des jours de congé de maladie et le traitement des crédits de congé de maladie — seront négociées au cours du prochain cycle de négociation collective.

>

> Dès que d'autres renseignements seront disponibles, nous les diffuserons sur le RCI.

>

>

> Deirdre Keane

> Director General / Directrice Générale

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> Human Resources /Ressources humaines

> Statistics Canada /Statistique Canada

> 613-951-9955

>

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## **APPENDIX "C"**

Treasury Board of Canada  
SecrétariatSecrétariat du Conseil du Trésor  
du Canada

Canada

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## Workplace Wellness and Productivity Strategy

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- [Consequences of absenteeism](#)
  - [Impacts on employee wellness](#)
  - [Financial impact on employees](#)
  - [Impact on employer](#)
- [What have we learned from others?](#)
- [The Workplace Wellness and Productivity Strategy: modernizing disability and sick leave management](#)
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### Commitment to ensuring a healthier, more productive, workplace

The Government of Canada is committed to enhancing the wellness and well-being of its employees. Workplace wellness and productivity go hand in hand as workforce well-being generates higher levels of employee engagement, in turn leading to better performing workplaces.

### The path travelled

In 2009, Treasury Board funded a three-year project, the Disability Management Initiative with a mandate to conduct analysis and benchmarking to identify necessary changes to policies, existing disability plans, and to make the disability management system more effective to promote workplace wellness and to improve productivity.

A Disability Management Technical Committee was struck involving representatives of five bargaining agents (Public Service Alliance of Canada, Professional Institute of the Public Service of Canada, Canadian Association of Professional Employees, Association of Justice Counsel, and Federal Government Dockyard Trades and Labour Council East) and Treasury Board Secretariat officials. The Technical Committee presented to the National Joint Council their confirmation of the gaps and problems in the current system as identified under the Disability Management Initiative.

Recognizing the importance of continued collaboration, a working group consisting of TBS officials and representatives from the bargaining agents was recently established to ensure that a modernized disability and sick leave management system is mindful of the nature of supports employees need in times of illness and injury and when they are able to return to work.

The different policies, directives and legislation that prescribe an employee's treatment when facing short and long-term illness/injuries were developed at different periods of time and in separate processes and contexts. As a result, there has never been an opportunity to undertake a comprehensive review and analysis of the interaction between these various elements. A new framework comprised of a single, integrated governance structure that would align all the policies, processes, services, roles, responsibilities and accountabilities is required to enhance employee wellness and productivity and to ensure sustainability of the disability and sick leave management system.

## What's wrong with the current system?

The current disability and sick leave management approach is fragmented and out of date. The two existing long-term disability plans - the Disability Insurance plan and the Public Service Management Insurance Plan - were designed in the 1970s and neither has kept pace with changing industry practices. In the meantime, recovery from common health ailments and diseases (e.g., cancer) has improved significantly, so that many employees now need support to return to the workplace. Other instruments are even older. The *Government Employee Compensation Act*, which provides support for occupational injuries and illness, was introduced in 1919; and the accumulated sick leave model, which provides income support during the long-term disability benefits waiting period, was established in 1923.

## The current system does not promote equitable access to disability supports and benefits

At present, there is a 65 day (13-week) waiting period before employees can access long-term disability benefits. Employees cover this period by using accumulated sick leave. Financial difficulties can occur when employees lack enough banked leave to get them through the full 65 day waiting period.

As seen in Table 1, about half of employees in the core public administration in fiscal year 2011-2012 had 40 or fewer days of banked sick days. Roughly 35 percent had fewer than 20 days. This means during illness and injury, many could end up losing 25 days of income before getting to long-term disability benefits.

Table 1: Employee Sick Leave Banks  
For the Core Public Administration (2011-2012)

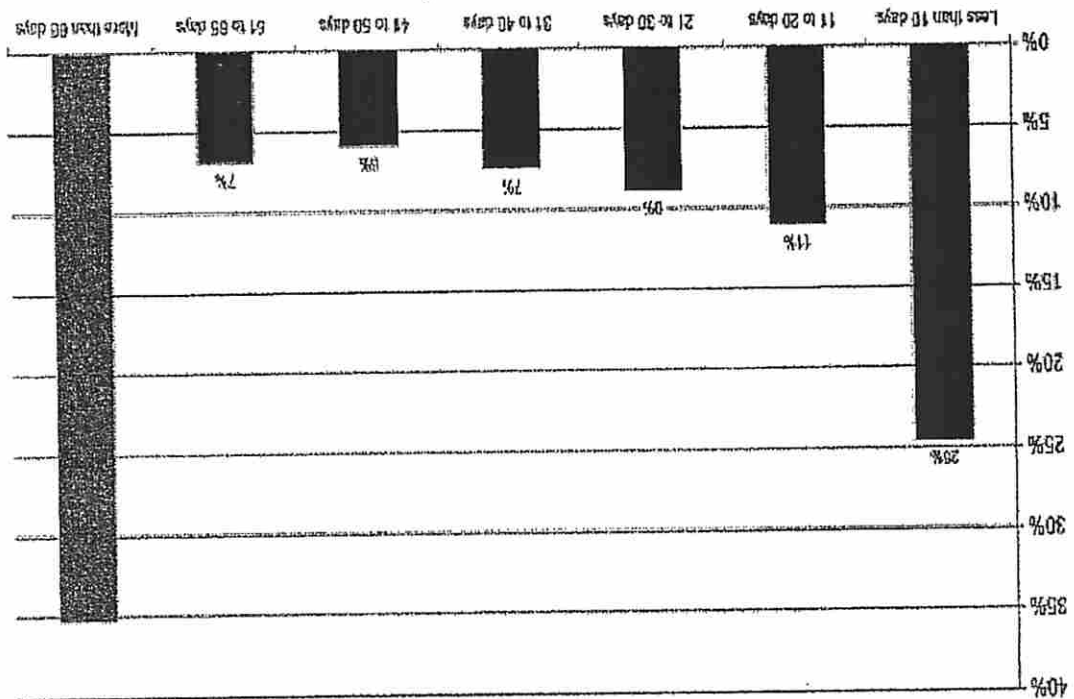
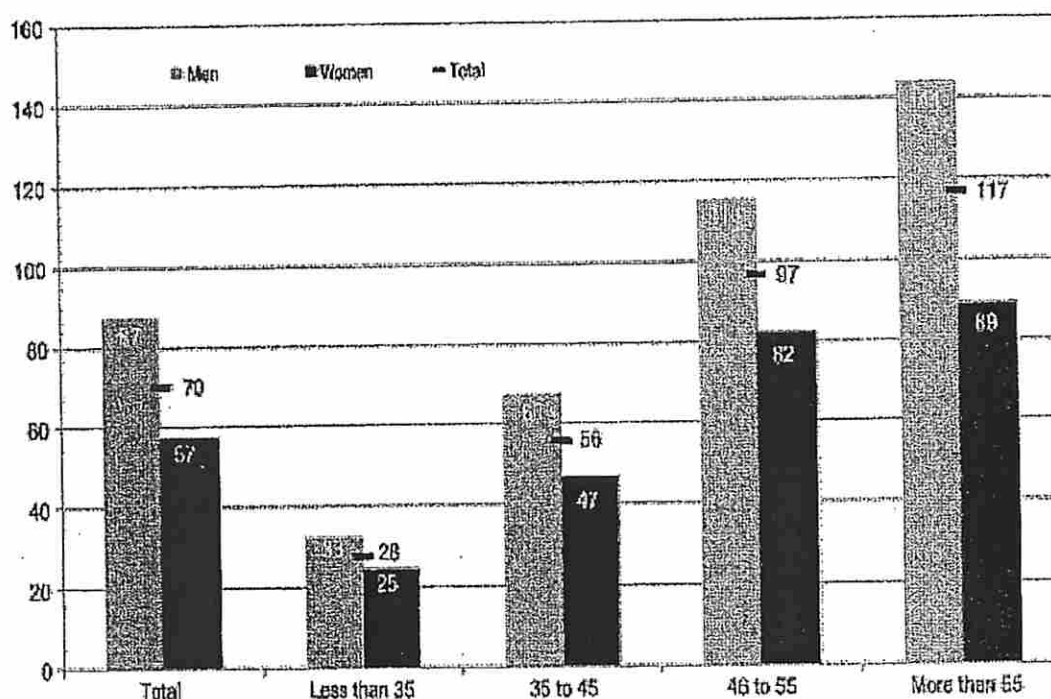


Table 1: Employee Sick Leave Banks for the Core Public Administration (2011-2012) - Text version  
(All data presented in this document is for the core public administration for fiscal year 2011-2012 and derived from leave requests).



As illustrated in Table 2, in 2011-2012 those under the age of 35 had on average only 27.9 days of banked sick leave. This represents a financial risk for many if they are stricken by prolonged injury or illness.

**Table 2: Average Sick Leave Balances (in days) by Gender and Age**



**Table 2: Average Sick Leave Balances (In days) by Gender and Age – Text version**

The data also indicates that about 33,500 workers (about 15 percent of the workforce) had at least one sick leave period (paid/unpaid) that lasted more than five consecutive days, many of which included a period of unpaid absence. For example, among those with sick leave periods lasting between 41 and 65 days on average close to 17 days were unpaid -- the equivalent of more than three weeks of pay.

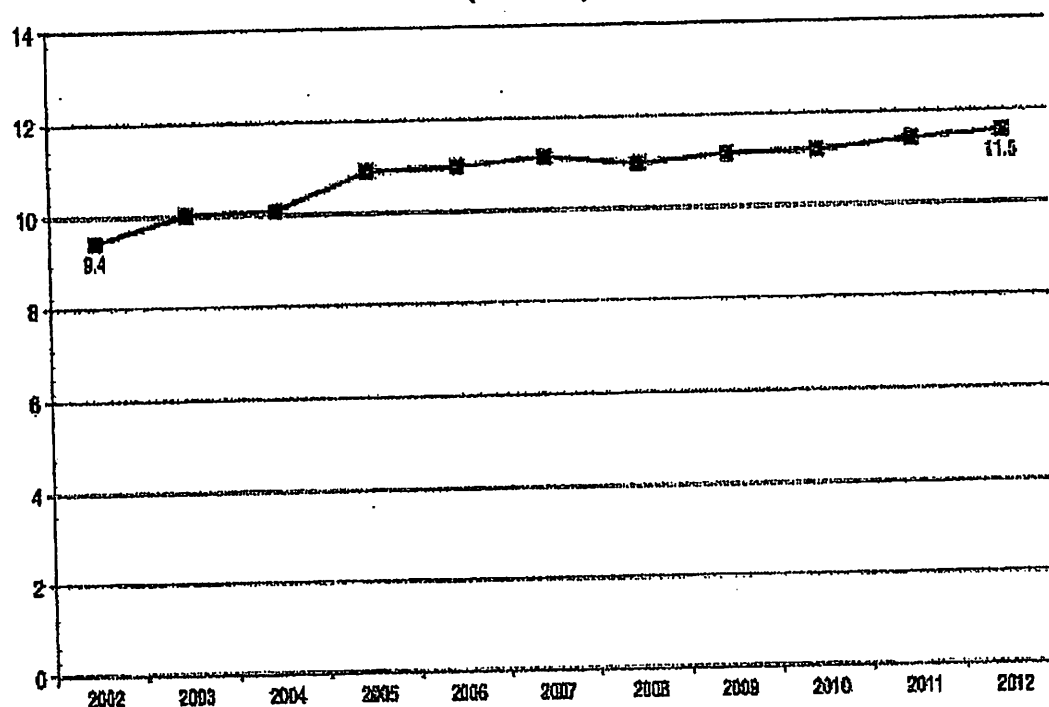
Under the current system, early intervention through active case management is delayed because return-to-work support can only be offered after the 13-week waiting period or after the exhaustion of all accumulated sick leave days, whichever is greater.

## Consequences of absenteeism

### Impacts on employee wellness

Absenteeism has a number of negative consequences for employees and employers. As shown in Table 3, absenteeism in the federal public service has been rising. In fiscal year 2001-2002, the average use of paid sick leave stood at 9.4 days. This has risen to an average of 11.5 days in 2011-2012.

**Table 3: Average Number of Paid Sick Days Used  
(2002-2012)**



**Table 3: Average Number of Paid Sick Days Used (2002-2012) – Text version**

When an employee becomes ill or injured they are generally expected to be away from work until full recovery. Emerging research however indicates that the longer one is away from work, the less likely they will ever return. The Conference Board of Canada notes that the likelihood of an employee returning to work from a prolonged health related absence falls to 50 percent after just six months away from the workplace. The Canadian Medical Association states that prolonged absence from work can harm an individual's mental, physical, and social well-being. The Association recommends that physicians help patients return to work as soon as possible after an illness or injury.

Facing delays in processing occupational claims means holding up Workers Compensation Boards' recommended treatment. Similarly, the requirement that all accumulated sick leave be exhausted before long-term disability plan eligibility further delays in accessing necessary supports and active case management.

## Financial impact on employees

Consider two employees – a 55 year old with 30 years of service and a 25 year old just starting out in their career – with exactly the same illness, requiring exactly the same amount of time away from work. Under the current approach, it is likely that the 55 year-old will experience no financial impact as a result of not working during the waiting period before long-term benefits kick in as they will likely have sufficient banked sick leave. Conversely, the 25 year-old may face significant financial hardship because they lack enough banked sick leave to carry her through the full 13-week period before the current long-term plan benefits commence.

Recurring absenteeism also carries potentially serious financial implications for employees. Employees who have less than 13 weeks of banked sick leave may need to rely on Employment Insurance to cover the balance. However, Employment Insurance recipients only receive up to 55 percent of their average insurable weekly earnings, or up to \$501 per week, and must face a two week waiting period.

## Impact on employer

Absenteeism also has a negative impact on employers. Absenteeism affects workplace productivity, and often adds to the workload of other employees. This can add to workplace stress, may increase work-life conflict, can hurt morale, and may in turn contribute to more absenteeism.

The Office of the Chief Actuary has estimated that the accrued government benefit obligation for the public service was approximately \$1.5 billion as at March 31, 2012.

## What have we learned from others?

Current approaches to disability and sick leave management in the private sector, and in other jurisdictions, place significant emphasis on recovery and return-to-work practices and supports. They generally provide punctual case management and rehabilitation services, typically through short-term disability plans.

A 2009 survey by the Conference Board of Canada indicated that 87 percent of Canadian employers now provide such short-term disability plans for their employees.

A review of practices in other jurisdictions reveals that many provinces offer a combination of sick leave, short-term and long-term disability support to their employees. For example, employees of the BC government do not accumulate sick leave. Employees take sick leave as needed, and receive 75 percent of their base salary. If employees are sick or expect to be on leave for more than five days (e.g., for surgery), or if they suffer from a mental illness, they require a medical form from their physician.

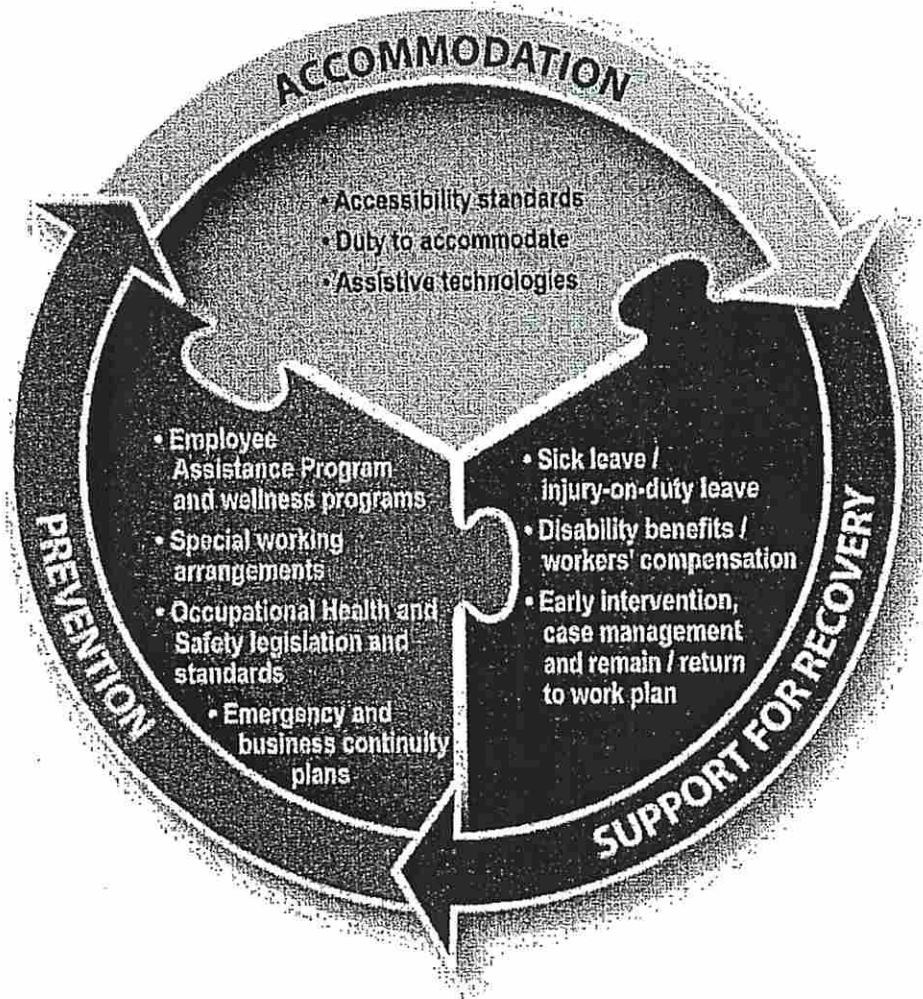
At the federal level, Canada Post Corporation recently introduced an integrated disability management system which features short-term disability support in place of accumulated sick leave. Canada Post uses an "abilities management" approach whereby sick leave is replaced with seven "personal days." If accepted in the short-term disability plan, 70 percent of salary is provided in the form of income replacement up to 40 weeks. Their long-term plan also provides 70 percent of income coverage through an insured plan that features 50/50 cost sharing of premiums.

## The Workplace Wellness and Productivity Strategy: modernizing disability and sick leave management

### Conceptual model

Disability management focuses on absences from work as a result of illness, injury or disability, and on preventing the risks that cause such absences. It is a coordinated effort by employers to reduce the occurrence and effect of illness and injury on workforce productivity, and to promote employee attachment. Its three components are prevention, support for recovery and accommodation, as illustrated in the diagram below.

**Figure 4: Disability Management: Prevention, Support for Recovery and Accommodation**



Full Graphic Version: Disability Management: Prevention, Support for Recovery and Accommodation.

Figure 4: Disability Management: Prevention, Support for Recovery and Accommodation – Text version

In line with this and existing practices from large public sector and private sector employers, the Government of Canada intends to replace the currently fragmented approach to disability and sick leave management with one that provides fair, comprehensive, seamless, and integrated supports for all employees of the federal public service, inclusive of separate employers. The goal is to implement a Workplace Wellness and Productivity Strategy that could take into consideration some of the following components:

- A number of sick leave days provided annually to be used at the employee's discretion. The number of days is envisioned to be within the typical range of paid sick leave days provided in other jurisdictions and in the private sector. At the start of each fiscal year employees will be given their annual allotment of sick leave days and be given flexibility to use those days to cover temporary illnesses such as the common cold.
- A short-term disability plan that could be modeled on industry standards. Similar to those observed in other jurisdictions, such a plan could consider allowing access to disability support after five consecutive days of illness or injury. The duration of the short-term



## Workplace Wellness and Productivity Strategy

disability plan could be up to 26 weeks (130 days). Most of the existing short-term disability practices reviewed provides 100 percent of salary replacement for accepted claims for a set period of time, with income replacement declining thereafter. Consistent with this concept, providing 100 percent income replacement for up to 25 days would be within the norm. This would likely ensure coverage for approximately 70 percent of all employees who typically face short-term disability spells. Providing 70 percent replacement for absences exceeding 25 days would represent a significant improvement over the current system, since about 45 percent of workers with absences exceeding 25 days during the year (2011-2012) had to take some unpaid days during their short-term disability period. Active case management with a strengthened focus on return-to-work support needs to be a key feature of any short-term disability plan design.

- A *retendered long-term disability plan* for represented and unrepresented employees could be designed to have a waiting period equal to the duration of a new short-term disability plan. If an employee's illness extended beyond the term of the short-term disability plan, then the employee could be eligible to be assessed under the long-term disability plan. Under the current long-term disability plan, which is similar to plans adopted by many other employers, employees receive 70 percent of their base salary for the period in which they continue to be too ill or too injured to return to work, up to age 65. Similar to the existing arrangements, the long-term disability plan would likely continue to be fully insured and premium-based.
- *Reduce claims reporting times* and improve data collection with respect to occupational claims covered under the *Government Employees Compensation Act*.
- An *enhanced Employee Assistance Program* and other wellness measures, with greater emphasis on prevention, education and awareness and self-assessment services, including in mental health. The Employee Assistance Program will continue to be administered by Health Canada.

A single disability and sick leave management system would ensure standardized and equitable treatment for all employees of the federal public service. It would also help ensure early intervention with seamless coverage and active case management for injured or ill employees. A single system would also address inconsistent income replacement coverage which currently disadvantages many employees with limited job tenure or recurring health condition. Under a new approach all employees would be treated equally, regardless of tenure of medical history.

Sick leave related provisions - yearly allotment of sick leave days and treatment of sick leave banks - will be negotiated during the next round of collective bargaining. Consultations will continue with bargaining agents on the elements of the disability and sick leave management framework. To this end, the current disability and sick leave management working group provides an opportunity to share expert views, express concerns, and provide valuable input in designing the short and long term disability plans. Working group discussions can also help inform the negotiation process on sick leave and related provisions for the upcoming round of collective bargaining.

## Conclusion

The WPS will be a modernized approach to disability and sick leave management which will:

- adopt the best practices used by other large employers;
- place greater emphasis on illness and injury prevention;
- improve return-to-work outcomes through active case management;
- provide better sick and disability coverage, especially for those with limited sick leave banks;
- modernize the administration of occupational-related sick leave and injury claims;
- reduce absenteeism through improved supports for employees; and
- improve the Employee Assistance Program.

In summary, the federal government will put in place a seamless disability and sick leave management system that provides a continuity of support for episodes of employee injury or

illness. This will strike a balance between employee wellness and workplace productivity. Regardless of an employees' tenure or medical history, the WPS would offer identical coverage to all federal public servants. It would provide all employees with an assurance of adequate income protection along with timely access to case management, rehabilitation, and return-to-work services in the event of occupational, and non-occupational, illness or injury.

For more information please consult the Frequently Asked Questions on the Workplace Wellness and Productivity Strategy.

Date Modified: 2014-01-10



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## **Frequently asked questions - Workplace Wellness and Productivity Strategy**

### **Questions**

- [Q1. How is the current approach to disability and sick leave management fragmented?](#)
- [Q2. What will happen to the sick leave banks I have accumulated?](#)
- [Q3. Do other public sector employers allow for the banking of unused sick days?](#)
- [Q4. When will the short-term disability plan come into effect?](#)
- [Q5. How many employees will be impacted?](#)

### **Answers**

#### **Q1. How is the current approach to disability and sick leave management fragmented?**

A1. Employees must currently rely on banked sick days to cover any short-term illnesses over the 13-week waiting period before long-term disability benefits can be accessed. This is an inefficient and arbitrary way to manage human resources as many employees lack enough sick leave banks to cover their needs, particularly younger employees and those with recurring health problems. The current approach also lacks active case management and rehabilitation supports to help employees return to work in a timely fashion.

#### **Q2. What will happen to the sick leave banks I have accumulated?**

A2. Sick Leave related provisions-yearly allotment of sick leave days and treatment of sick leave banks-will be negotiated during the next round of collective bargaining.

#### **Q3. Do other public sector employers allow for the banking of unused sick days?**

A3. Experience in other public sector organizations varies. For example, Ontario and BC do not allow for sick leave banks whereas, Canada Post Corporation allow for the usage of sick leave banks for income adjustments during short-term disability.

#### **Q4. When will the short-term disability plan come into effect?**

A4. We would like the new system to be operational by summer 2016. To that end, we will be engaging bargaining agents and the industry. The procurement process will then start for a short-term disability plan. The Request for Proposal for the products and services required to support the short- and new long-term disability plans would be issued in 2014, with contract award expected about one year later. At the same time we will be working closely with our partners from Health Canada, Labour-HRSDC and PWGSC, to coordinate our modernization activities.

#### **Q5. How many employees will be impacted?**

A5. All employees will be impacted and will benefit from a system that is fair, affordable, and sustainable.

Date Modified: 2014-01-10





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## **APPENDIX "D"**



*S*  
*Workplace Wellness*

By email - Manon.Brassard@tbs-sct.gc.ca

June 9, 2014

Ms Manon Brassard  
Assistant Deputy Minister  
Compensation & Labour Relations  
Treasury Board of Canada Secretariat  
400 Cooper Street  
Ottawa, Ontario K1S 0R5

Dear Ms Brassard:

**Re: Communications to employees re Workplace Wellness and Productivity Strategy and Short-Term Disability Insurance**

We write in response to recent communications from various departments within Treasury Board to employees regarding the government's new Workplace Wellness and Productivity Strategy ("Strategy"), and its plan to implement short-term disability insurance as part of the Strategy.

For the reasons that follow, it is our view that these communications constitute a violation of the duty to bargain in good faith and interference with PSAC's representation of employees, contrary to the *Public Service Labour Relations Act* ("PSLRA"). Moreover, any actions to implement the Strategy constitute a violation of the statutory freeze in place for all five core bargaining units represented by PSAC. We therefore demand an immediate halt to all steps to implement the Strategy, including the implementation of short-term disability insurance, and further insist that Treasury Board correct its misleading communications to employees regarding these issues.

#### **Email to employees**

On or around May 25, 2014, mass email communications were sent to employees in the core public administration regarding the government's introduction of the Workplace Wellness and Productivity Strategy. An example of the content of these emails is as follows:

This new strategy will provide fair and comprehensive sickness and disability coverage for all employees, regardless of tenure or medical history, and will include a new short-term disability plan to ensure seamless coverage between sick leave and long-term disability benefits. Active case management will also be employed to facilitate successful workplace reintegration when employees are ready to return to work.

Some of these emails contained a link to a website providing further detail about the Strategy. That website listed the components of the government's Strategy, including: a number of sick days provided annually; a short-term disability plan; and a retendered long-term disability plan.

These communications clearly state that the employer is in the process of implementing the Strategy, and that this Strategy will include short-term disability benefits, thereby giving the impression that these terms and conditions of employment are a *fait accompli* rather than bargaining proposals, as they properly should be. These communications are therefore false and highly misleading to employees.

### **Bargaining in bad faith**

As you know, Notice to Bargain has been served in respect of all five core bargaining units represented by PSAC (FB, PA, SV, TC, and EB groups). The law is clear that the duty to bargain in good faith applies throughout the entire bargaining process, from the time Notice to Bargain is served until a collective agreement is concluded. Conduct both at and away from the bargaining table can constitute a violation of the duty to bargain in good faith. Treasury Board's false and misleading communications to employees regarding the Strategy and short-term disability insurance constitute bargaining in bad faith.

The employer's mass email communications directly to employees clearly represent an attempt to exert undue influence on the bargaining process—the employer has bypassed the union and promised employees the introduction of the Strategy and, particularly, a new short-term disability benefit. The emails improperly lead employees to believe that the content of the Strategy, including the introduction of short-term disability benefits, are not the proper subject of bargaining but rather can be unilaterally implemented by the employer.

PSAC stresses that the employer has no basis to assume that the content of the Strategy, including the introduction of short-term disability benefits, are not the proper subject of bargaining. Sick leave and health insurance benefits are not excluded from bargaining under the *PSLRA* and therefore the employer is obligated to bargain the introduction of these new proposals. To give the contrary impression to employees, at the outset of bargaining, is misleading and bad faith.

### **Interference with PSAC's representation of employees**

These false and improper communications to employees further constitute interference with PSAC's representation of its members, contrary to paragraph 186(1)(a) of the *PSLRA*. These communications are clearly calculated to damage PSAC's ability to represent employees at the bargaining table, by circumventing the union and making a promise directly to employees. This promise hinders PSAC's ability to bargain a collective agreement on different terms.

### **Violation of statutory freeze**

As you know, all five core bargaining units represented by PSAC are subject to a Notice to Bargain, and are therefore subject to the bargaining freeze pursuant to section 107 of the *PSLRA*. This freeze applies not only to all terms and conditions in the respective collective agreements, but to all terms and conditions of employment that may be included in a collective agreement. Therefore, the entire Strategy—all of which could be included in a collective agreement—cannot be implemented in respect of the employees currently subject to the bargaining freeze.

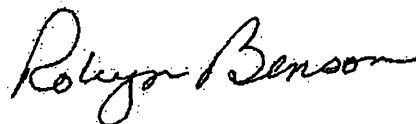
The employer's communications make it clear that it is currently in the process of implementing the Strategy, including the short-term disability plan. These actions are plain violations of the statutory freeze.

PSAC demands that Treasury Board take the following steps:

- Immediately cease all steps to implement the Strategy, including any steps to introduce short-term disability benefits;
- Rescind all false communications regarding the introduction of the Strategy, and issue a communication to employees affirming its obligation to bargain in good faith over the introduction of the Strategy, including short-term disability benefits.

The importance of addressing these issues cannot be overstated. Please advise us immediately as to whether you will take steps as outlined above.

Sincerely,



Robyn Benson  
National President

## **APPENDIX F TO G**



The Professional Institute  
of the Public Service  
of Canada

L'Institut professionnel  
de la fonction publique  
du Canada

Appendix F

July 11, 2014

Ms. Susan Mailer  
Director, Registry Operations and Policy  
Public Service Labour Relations Board  
240 Sparks Street, P.O. Box 1525, Station "B"  
Ottawa, ON K1P 5V2

Dear Ms. Mailer:

**Re: Complaint pursuant to s. 190 of the PSLRA – PIPSC v. Treasury Board**

You will find enclosed a duly signed Complaint Form (Form 16) along with other pertinent documents in relation to a complaint filed by the Institute against the Treasury Board Secretariat.

The Complaint alleges that the Respondent has (1) engaged in an unfair labour practice by interfering with the administration of an employee organization; (2) failed to bargain in good faith; and (3) violated the statutory freeze provision.

It is proposed that the complaint be heard in Ottawa in the English language. We anticipate this hearing to be concluded within two (2) days. Please note that, given that this complaint deals with matters related to the ongoing round of collective bargaining between the parties, we respectfully request expeditious treatment of this matter.

The Institute will be represented in this matter by:

Peter Engelmann / Colleen Bauman  
Sack Goldblatt Mitchell  
30 Metcalfe Street, Suite 500  
Ottawa, ON K1P 5L4  
Tel.: (613) 235-5327

Please contact counsel directly in order to schedule an appropriate date for the hearing of this grievance.

Thank you for your cooperation in this matter.

Yours sincerely,

Isabelle Roy  
General Counsel

Encl.

cc.: Debi Daviau, President

Better  
together



Bien mieux  
ensemble

250, chemin Tremblay Road, Ottawa, Ontario K1G 3J8

Tel: (613) 228-6310 / 1-800-267-0446

Fax: (613) 228-9048 / 1-800-465-7477 [www.pipsc.ca](http://www.pipsc.ca)



Public  
Service  
Labour  
Relations  
Board

Commission des  
relations de  
travail dans la  
fonction  
publique

P.S.L.R.B. File Number

FOR OFFICE USE ONLY

Form 16  
(Section 57)

**COMPLAINT UNDER SECTION 190 OF THE ACT**

*Public Service Labour Relations Act*

**NOTICE:** The original and one copy of this complaint must be filed with the Executive Director of the Board.

**1. Complainant Information:**

☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms.

Last or family name (print in block letters): THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

First name (print in block letters):

Middle name(s) (print in block letters):

ATTN: Isabelle Roy

**Mailing address:**

Apartment (if applicable): \_\_\_\_\_ Number and street: 250, chemin Tremblay Road

City: Ottawa Province or Territory: Ontario Postal code: K1G 3J8

**Telephone numbers (where we can reach you):**

**Fax numbers (where we can reach you):**

Home: (\_\_\_\_\_) \_\_\_\_\_

Home: (\_\_\_\_\_) \_\_\_\_\_

Office: (613) 228-8310

Office: (613) 228-9048

E-mail address: lroy@plpsb.ca

Name of authorized representative (if applicable): PETER ENGELMANN/COLLEEN BAUMAN - Sack Gordon Mitchell LLP

**Mailing address (if different from above):**

Apartment (if applicable): Suite 500 Number and street: 30 Metcalfe Street

City: Ottawa Province or Territory: Ontario Postal code: K1P 6L4

Telephone number: (613) 482-2452 Fax number: (613) 235-3041

E-mail address: pengelmann@sgmlaw.com

**2. Respondent Information:**

Name: Her Majesty the Queen in Right of Canada as Represented by Treasury Board

**Mailing address:**

Apartment (if applicable): \_\_\_\_\_ Number and street: 144 O'Connor Street

City: Ottawa Province or Territory: Ontario Postal code: K1A 0R8

Where information on more than one person is required in a section or the space provided is not sufficient, please attach additional pages of same-sized paper.

**3. Paragraph of the *Public Service Labour Relations Act* on which the complaint is based:**

- ☐ 190(1)(a) Failure to comply with section 56 (duty to observe terms and conditions).
- ☒ 190(1)(b) Failure to comply with section 106 (duty to bargain in good faith).
- ☒ 190(1)(c) Failure to comply with section 107 (duty to observe terms and conditions).
- ☐ 190(1)(d) Failure to comply with subsection 110(3) (duty to bargain in good faith).
- ☐ 190(1)(e) Failure to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award).
- ☐ 190(1)(f) Failure to comply with section 132 (duty to observe terms and conditions).
- ☒ 190(1)(g) Unfair labour practice within the meaning of section 185.

**4. Concise statement of each act, omission or other matter complained of, including dates and names of persons involved:**

See attached Schedule "A"

**5. Date on which the complainant knew of the act, omission or other matter giving rise to the complaint:**

20/05/2014

(dd/mm/yyyy)

*Complete sections 6 and 7 only if the complaint alleges an unfair labour practice prohibited by paragraph 188(b) or (c) of the Public Service Labour Relations Act and if the employee organization has established a grievance or appeal procedure.*

**6. Date on which a grievance or appeal was presented in accordance with any procedure that has been established by the employee organization:**

N/A

(dd/mm/yyyy)

Where information on more than one person is required in a section or the space provided is not sufficient, please attach additional pages of same-sized paper.



7. Date on which the employee organization has provided the complainant with a copy of a decision to the grievance or appeal referred to in section 6:

N/A

(dd/mm/yyyy)

8. Steps that have been taken by or on behalf of the complainant for the resolution of the action, omission or other matter giving rise to the complaint:

See attached Schedule "A".

9. Corrective action sought under subsection 192(1) of the *Public Service Labour Relations Act*:

See attached Schedule "A".

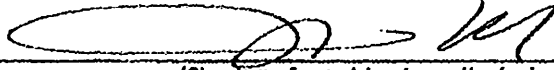
10. Other matters relevant to the complaint:

See attached Schedule "A".

I, the undersigned, (duly authorized representative of the complainant,) hereby file this Complaint under Section 190 of the Act.

Date: 07/10/2014

(dd/mm/yyyy)



(Signature of complainant or authorized representative)

General Counsel

(Office held with the complainant, where applicable)

Where information on more than one person is required in a section or the space provided is not sufficient, please attach additional pages of same-sized paper.

**SCHEDULE "A"**

**BEFORE THE PUBLIC SERVICE LABOUR RELATIONS BOARD**

**BETWEEN:**

**THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**

**(The "Complainant")**

**- and -**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY  
TREASURY BOARD**

**(The "Respondent")**

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**COMPLAINT UNDER SECTION 190 OF THE  
PUBLIC SERVICE LABOUR RELATIONS ACT**

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**OVERVIEW**

1. The Complainant, the Professional Institute of the Public Service of Canada, submits that the Respondent, Her Majesty the Queen in Right of Canada as represented by Treasury Board, by sending misleading and inaccurate communications to employees related to its "Workplace Wellness and Productivity Strategy (the "Strategy"), has interfered with the administration of an employee organization and the representation of employees in an employee organization, contrary to section 186 of the *Public Service Labour Relations Act* (the "Act").

2. As well, the Respondent, through its public communications regarding its Strategy and the actions it has taken to implement the Strategy, despite the fact that bargaining has only begun, has violated its duty to bargain in good faith, contrary to

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section 106 of the Act. Its actions with respect to implementing the Strategy also constitute a violation of the statutory freeze pursuant to section 107 of the Act.

### **BACKGROUND FACTS**

3. The Complainant is the certified bargaining agent for employees in the following bargaining units that have commenced the current round of bargaining with the Respondent: Health Services (SH) Group, the Audit, Commerce and Purchasing (AV) Group, the Applied Science and Patent Examination (SP) Group, the Architecture, Engineering and Land Survey (NR) Group and the Research Group (RE) (the "Bargaining Units").

4. The respective Collective Agreements between the Complainant and the Respondent for these Bargaining Units include provisions governing sick leave. For example, attached as Exhibit A is a copy of article 16 from the SH Collective Agreement between the parties, which expires on September 30, 2014. Article 16 of this Agreement governs sick leave and provides that an "employee shall earn sick leave credits at the rate of nine decimal three seven five (9.375) hours for each calendar month for which the employee receives pay for at least seventy-five (75) hours." The Collective Agreements for the AV, SP, NR and RE groups contain comparable provisions.

5. On February 25, 2014, the Respondent served notice to bargain on the Complainant with respect to the AV group. On June 2, 2014 the Respondent served notice to bargain on the Complainant with respect to the SH, SP, RE, and NR groups. Attached as Exhibit B is a copy of these notices to bargain. The parties are currently in the process of establishing dates to exchange proposals and to commence face to face bargaining sessions.

6. Despite the presence of sick leave provisions in the respective collective agreements and the fact that bargaining is currently underway, the Respondent has publically indicated that it is proceeding with a plan to replace the current sick leave system with a new short-term disability program as part of its Workplace Wellness and Productivity Strategy. Attached as Exhibit C is a copy of a webpage entitled "Workplace

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Wellness and Productivity Strategy." Also attached as Exhibit D is a copy of a press release entitled "Minister Clement to Modernize Disability Management in the Public Service," dated June 10, 2013. Taken together these documents demonstrate the Respondent's clear intent to implement a short-term disability program in place of the current sick leave provisions. In particular, Exhibit C discusses specific details of the plan including the duration of the short-term disability plan and the amount of coverage employees can receive under the plan.

7. On or around May 23, 2014, the Respondent, through its representatives in various departments, sent out emails to employees in the core public administration, including to employees in Bargaining Units represented by the Complainant. These emails refer specifically to the Respondent's new "short-term disability plan." Attached as Exhibit E is an email that was sent to employees at Statistics Canada from Deirdre Keane, Director General, Statistics Canada and an email to employees at Health Canada from the Deputy Minister of Health, George Da Pont, and Associate Deputy Minister of Health, Paul Glover. The Health Canada email states:

This new strategy will provide fair and comprehensive sickness and disability coverage for all employees, regardless of tenure or medical history and will include a new short-term disability plan to ensure seamless coverage between sick leave and long-term disability benefits.

The Government was among the remaining few large employers that did not offer formal short-term disability coverage to its employees. This placed many at risk of income loss during prolonged periods of illness.

Notably, this email communication refers to the fact that the Strategy *will* include a new short-term disability plan, presenting the plan as a fact rather than as something that is yet to be the subject of negotiations at the bargaining table.

8. Shortly thereafter on June 6, 2014, employees at the Public Health Agency of Canada received emails directly from Marina Petrova, of Sun Life Financial, the current insurer of the Respondent's group benefits plan. This email, which is attached as Exhibit F, invites employees to meetings in order to understand "the limitation of their group benefits," including "major gaps as relates to critical illnesses such as, Cancer, Multiple sclerosis, paralysis, Stroke, Alzheimer's disease." By focussing on "limitations" in their

current coverage related to "critical illness", this email is aimed at falsely creating a sense of fear amongst employees with respect to their current sick leave coverage.

9. Recently, public comments by the President of the Treasury Board, Tony Clement, have also indicated that the Respondent is unwilling to negotiate over changes to sick leave and the introduction of a short-term disability plan. Attached as Exhibit G is an article published in the Ottawa Citizen on July 8, 2014 entitled "Unions rejected 'olive branch': Tony Clement", which reports:

Clement indicated any discussion over whether a new plan is necessary is not in the cards.

"I think it (short-term disability) is a better way to do things," he said. We have a current system that has been around for several decades, which no longer reflects the needs of employees and no longer protects the interests of tax payers, so I believe we can come up with a better system that will in fact be there for employees when they need it."

10. As well, a review of the Government of Canada's procurement website "www.buyandsell.gc.ca" reveals that the Respondent is well underway with respect to the procurement process for a new short-term disability plan and is actively taking steps to implement this plan. Attached as Exhibit H is a tender notice entitled "Workplace Wellness and Productivity Strategy (24062-140104/A)." This notice states that "a component of the [Workplace Productivity Strategy] would consist of procuring services to manage short-term disability plan (STDP)." The notice further provides that two Requests for Information (RFI) have already been circulated to industry participants and that a draft RFP will be circulated in the fall of 2014.

#### **UNFAIR LABOUR PRACTICES - EMPLOYER**

11. Section 186(1)(a) of the Act provides as follows:

Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall

(a) participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization

12. The Complainant submits that the Respondent's conduct, as described in paragraphs 7 and 8 above, in contacting employees both directly and through their insurer Sun Life Canada over proposed changes to sick leave, a matter that is properly the subject of bargaining, constitutes interference within the meaning of section 186. Both communications are misleading and are directed at creating unnecessary fear amongst the Complainant's members regarding the current level of sick leave coverage, thereby undermining the Complainant's representational role.

13. As well, in the email sent on or around May 23, 2014 (Exhibit E), the Respondent has wrongly undertaken to its employees as a matter of fact that it is introducing a short-term disability plan before these matters have even been discussed at the bargaining table.

14. These improper and misleading communications are intended to harm the Complainant's ability to fully represent its members at the bargaining table and undermine its role vis-a-vis its members, by leading members to falsely believe that sick leave and short-term disability are not properly the subject of bargaining and that changes to them can be unilaterally implemented by the Respondent.

#### **DUTY TO BARGAIN IN GOOD FAITH**

15. Section 106 of the Act provides as follows:

After the notice to bargain collectively is given, the bargaining agent and the employer must, without delay, and in any case within 20 days after the notice is given unless the parties otherwise agree,

(a) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and

(b) make every reasonable effort to enter into a collective agreement.

16. The Complainant submits that the Respondent has violated its statutory duty to bargain in good faith over proposed changes to sick leave and short-term disability, contrary to section 106 of the Act. The Respondent's repeated public assertions, as evidenced by its website, press releases, communications to employees, and public statements of the Treasury Board President described above, all indicate that it has

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already determined that it is implementing a short-term disability plan for all employees in the public service as part of its overall Workplace Wellness and Productivity Strategy and that it is not willing to truly bargain over sick leave and short-term disability with the Complainant, and instead is engaging merely in surface bargaining.

17. Furthermore, the Respondent's actions in proceeding with procurement related to this Strategy, as evidenced by its Tender Notice (Exhibit H) indicate that it is already taking concrete steps to implement its own unilaterally developed Strategy for dealing with sick leave, despite the fact that any changes to sick leave should properly form a subject matter for bargaining.

18. The Respondent's conduct with respect to its communications and implementation of its Strategy, as described above, are a violation of the duty to bargain in good faith contrary to s. 106 of the Act.

#### **DUTY TO OBSERVE TERMS AND CONDITIONS**

19. Section 106 of the Act provides as follows:

Unless the parties otherwise agree, and subject to subsection 125(1), after the notice to bargain collectively is given, each term and condition of employment applicable to the employees in the bargaining unit to which the notice relates that may be included in a collective agreement, and that is in force on the day on which the notice is given, is continued in force and must be observed by the employer, the bargaining agent for the bargaining unit and the employees in the bargaining unit until a collective agreement is entered into in respect of that term or condition or

(a) if the process for the resolution of a dispute is arbitration, an arbitral award is rendered; or

(b) if the process for the resolution of a dispute is conciliation, a strike could be declared or authorized without contravening subsection 194(1).

20. Finally, the Respondent, through the unilateral actions it has taken to introduce and implement its Strategy, including its short-term disability plan, constitute a violation of the statutory freeze pursuant to section 107 of the Act. Sick leave is a matter included in collective agreements and the Employer is precluded from taking steps to implement

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its Strategy, which alters terms and conditions of employment, while there is a statutory freeze underway.

#### **REMEDY**

21. The Complainant seeks the following remedies pursuant to section 192 and section 36 of the Act:

- (a) An expedited hearing before the Board;
- (b) An Order granting Interim relief, including that the Respondent immediately cease all steps to implement the strategy pending the outcome of the complaint;
- (c) A declaration that the Respondent has violated sections 106, 107 and 186 of the Act;
- (d) An Order that the Respondent retract all misleading communications and issue a new communication to employee affirming its obligation to bargain in good faith over the Strategy, including short-term disability benefits;
- (e) An Order that the parties bargain in good faith regarding the contents of the Strategy;
- (f) An Order that the Respondent comply with the statutory freeze;
- (g) An Order requiring the Respondent to post the decision in a prominent workplace location accessible to employees in the Bargaining Units; and
- (h) Such further Order or relief as counsel may request and that the Board may permit.

Dated at Ottawa, this 11<sup>th</sup> day of July 2014.



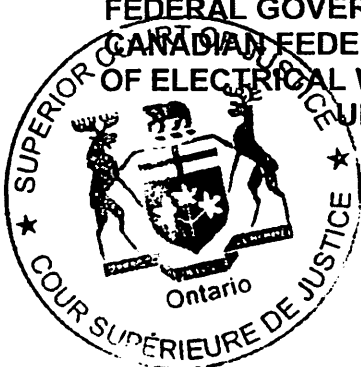
ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, COLIN MUISE,  
STAN BUDAY, CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES, NICK  
GIANNAKOULIS, ASSOCIATION OF CANADIAN FINANCIAL OFFICERS, CANADIAN  
MERCHANT SERVICE GUILD, ASSOCIATION OF JUSTICE COUNSEL, FEDERAL  
GOVERNMENT DOCKYARD TRADES AND LABOUR COUNCIL (ESQUIMALT),  
FEDERAL GOVERNMENT DOCKYARD TRADES AND LABOUR COUNCIL (EAST),  
CANADIAN FEDERAL PILOTS ASSOCIATION, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, CANADIAN AIR TRAFFIC CONTROL ASSOCIATION,  
UNIFOR LOCAL 588-G AND UNIFOR LOCAL 2182

Applicants

- and -



ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER Rule 14.05 of the *Ontario Rules of Civil Procedures*,  
s. 2(d), s. 24(1), and 32 of the *Canadian Charter of Rights and Freedoms*,  
and s. 52 of the *Constitution Act, 1982*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date and time to be fixed by the Registrar, at 161 Elgin Street, Ottawa, ON, K2P 2K1.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedures, serve it on the applicant's lawyer or, where

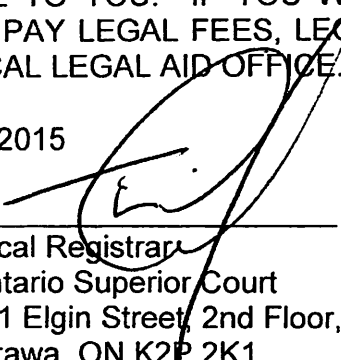
the applicant does not have a lawyer, service it on the applicant, and file it, with proof of service, in this court office, and you and your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 26, 2015

Issued by: \_\_\_\_\_

  
Local Registrar  
Ontario Superior Court  
161 Elgin Street, 2nd Floor,  
Ottawa, ON K2P 2K1

TO: **The Attorney General of Canada**  
Department of Justice  
500-50 O'Connor Street  
Ottawa, ON K1A 0H8

## APPLICATION

### A. The Applicants make application for:

1. A declaration that Division 20 (s. 253 – s. 273) of the *Economic Action Plan 2015, No. 1*, (Bill C-59), infringes and denies the rights and freedoms guaranteed by section 2(d) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), insofar as it interferes with the rights of employees to engage in a meaningful process of collective bargaining and prevents employees from participating in strike action over the issue of sick leave and/or disability coverage, and that such infringement cannot be demonstrably justified as a reasonable limit pursuant to section 1 of the *Charter*;
  2. A declaration that, insofar as the impugned provisions infringe and deny the rights and freedoms guaranteed by s. 2(d) pursuant to section 52 of the *Constitution Act*, the above provisions of Bill C-59 are of no force or effect;
  3. An Order pursuant to subsection 24(1) of the *Charter*, providing for such relief as is appropriate in the circumstances in order to remedy the harm to the collective bargaining process arising from the impugned provisions, whether or not a collective agreement was or has been entered into;
  4. The costs of this Application; and
  5. Such further and other relief as counsel may request and this Honourable Court may deem to be just and appropriate.
-

## **B. The grounds for the application:**

### ***The Applicants***

1. The Professional Institute of the Public Service of Canada (the "Institute") is the second largest bargaining agent for employees in the federal public service. It was founded as an association of employees in 1920 for the purpose of protecting the interests of professional public service employees and first became a certified bargaining agent for public service employees in 1967;
2. The Institute has approximately 55,000 members and is the bargaining agent for over 41 knowledge-based groups employed by approximately 27 different employers in seven jurisdictions. With respect to the federal public service, the Institute represents over 34,000 employees in 6 different bargaining units, who are affected by the impugned provisions. The employees represented by the Institute who are employed by the federal public service are a highly skilled and well-educated workforce, comprised largely of scientists and other professionals;
3. For all 6 affected bargaining units, the Institute is currently in the process of negotiating collective agreements with the Treasury Board Secretariat ("Treasury Board"). Sick leave/short-term disability is a key item in the current negotiations;
4. Colin Muise is a registered nurse in the Nurses (NU) occupational group, employed at the CHN 03 level at Canadian Forces Base Greenwood, Nova Scotia, Department of National Defence. He is also the Bargaining Team President for the Health Services (SH) Group of the Institute for its current round of bargaining;
5. Stan Buday is a Technical Support Analyst at Service Canada. He is also the President of the Computer Systems (CS) Group Executive of the Institute and a member of the CS bargaining team for the current round of bargaining;

6. The Canadian Association of Professional Employees ("CAPE") is the third largest bargaining agent for employees in the federal public service. CAPE has over 12,000 members. CAPE was created in 2003 from a merger of the Canadian Union of Professional and Technical Employees, the bargaining agent representing translators, interpreters and terminologists, with the Social Science Employees Association;
7. CAPE is the bargaining agent for the Economics and Social Science Services (EC) bargaining unit and the Translation (TR) bargaining unit, both of which are affected by Bill C-59;
8. Nick Giannakoulis is the National Vice-President of CAPE. He previously held various Local and nationally elected positions with CAPE beginning in 2005. He is substantively a Manager in the EC bargaining unit, currently employed at the EC-07 level at the Public Health Agency of Canada in Ottawa, with 17 years of service in the federal Public Service. He has also been a Bargaining Team member of the EC Group for CAPE in its current round of bargaining, since 2013;
9. The Association Of Canadian Financial Officers ("ACFO") represents financial officers and financial managers employed in the federal public service. ACFO has approximately 4500 members in the Financial Management (FI) bargaining unit that are affected by Bill C-59;
10. The Canadian Merchant Service Guild is a national association of Ships' Officers and Marine Pilots. The Guild was originally established by an Act of Parliament in 1919 and it represents the majority of Ships' Officers and Pilots in the Canadian Maritime Industry. The Guild has approximately 1100 members in the Ships' Officers (SO) bargaining unit that are affected by Bill C-59. The SO Group comprises positions that are primarily involved in the on-board command and control of deck, engine room, electronic or electrical, radio or supply operations on board vessels, floating plants or submersibles and in the training and preparation

for continuing employment as a Ships' Officer; the piloting of military vessels in and about a harbour; the instruction of cadets or other officers undergoing training in the knowledge and skills related to the officer activities and the performance of related activities between ship and shore;

11. The Association Of Justice Counsel ("AJC") is the exclusive bargaining agent for federal public service lawyers who work for the Department of Justice ("DOJ"), the Public Prosecution Service of Canada ("PPSC"), the Bureau of Pension Advocates (Veterans' Affairs) and various federal agencies and tribunals across the country, such as Canadian Human Rights Commission, Elections Canada, the Office of the Privacy Commissioner, the Office of the Information Commissioner, Immigration and Refugee Board, the Canadian Human Rights Tribunal. The AJC has approximately 2600 members in the Law Practitioner (LP) bargaining unit that are affected by Bill C-59;
12. The Federal Government Dockyard Trades And Labour Council (Esquimalt) represents employees who carry out the day to day repair and maintenance on the west coast Canadian Naval Fleet at CFB Esquimalt, repair and maintain torpedoes at Canadian Forces Ammunition Depot Rocky Point, and perform live testing on Canadian and American torpedoes at Canadian Forces Maritime Experimental Test Range. They have approximately 750 members in the Ship Repair West (SRW) bargaining unit that are affected by Bill C-59;
13. The Federal Government Dockyard Trades And Labour Council (East) represents employees who carry out the day to day repair and maintenance on the east coast Canadian Naval Fleet. They have approximately 700 members in the Ship Repair East (SRE) bargaining unit that are affected by Bill C-59;
14. The Canadian Federal Pilots Association ("CFPA") represents employees engaged in federal government aviation inspections, pilot flight testing, licensing, aviation regulatory enforcement, certification of air operators, aircraft certification flight

testing, development of aviation operation regulations and standards, Coast Guard helicopter operation, search and rescue, aviation accident investigations, safety analysis and promotion, and the regulation and oversight of the air navigation system. CFPA members are also relied upon to fly government aircraft in support of the national emergency response plan. The CFPA have approximately 430 members in the Aircraft Operations (AO) bargaining unit that are affected by Bill C-59;

15. The International Brotherhood Of Electrical Workers ("IBEW") represents electronics technologists and electricians who are specialists in the installation and maintenance of electronics equipment for weather facilities, radio frequency allocation and monitoring, as well as air, land, and marine transportation systems. Their members are employed across Canada by NAV CANADA, and several Federal Government Departments including Fisheries and Oceans, Canadian Coast Guard, National Defence, Environment Canada, and Industry Canada, just to name a few. The IBEW has approximately 1000 members in the Electronics (EL) bargaining unit that are affected by Bill C-59;
16. The Canadian Air Traffic Control Association ("CATCA") represents all Air Traffic Controllers in Canada. It is a local of Unifor. Its members work for Transport Canada, Serco, and NAV Canada. CATCA has approximately 7 members in the Air Traffic Control (AI) bargaining unit who carry out civil aviation safety inspection functions and who are affected by Bill C-59;
17. Unifor Local 2182 represents the Canadian Coast Guard Marine Communications Officers and has approximately 340 members in the Radio Operations (RO) bargaining unit that are affected by Bill C-59;
18. Unifor Local 588-G represents Treasury Board printing employees and has approximately 10 members in the Printing Operations (non supervisory) bargaining unit that are affected by Bill C-59. Unifor Local 588-G has transferred its bargaining

rights to Unifor Local 87-M, which has applied for an updated certification order to recognize the fact that they are being represented by Unifor Local 87-M;

***Collective Bargaining and Section 2(d) of the Charter***

19. The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and terms and conditions of employment and thereby gain some control over their work, a major aspect of their lives;
20. The Supreme Court of Canada has recognized that the section 2(d) guarantee of freedom of association protects a meaningful process of collective bargaining. Only by coming together in collective bargaining associations, and thereby strengthening their bargaining power with their employer, can employees meaningfully pursue their workplace goals;
21. Legislation that substantially interferes with a meaningful process of collective bargaining by reducing employees' negotiating power is inconsistent with the guarantee of freedom of association enshrined in s. 2(d);
22. Law and regulations that restrict the subjects that can be discussed, impose arbitrary outcomes, ban recourse to collective action by employees without adequate countervailing protections, make employees' workplace goals unachievable, or set up a process that employees cannot effectively influence, violate s. 2(d) in that they amount to a substantial interference with meaningful collective bargaining;
23. The right to collective bargaining as part of the freedom of association is also recognized at international law, including in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Labour Organization's Convention No. 87



(Concerning Freedom of Association). Canada is a signatory to all of these international conventions;

***The Right to Strike and Section 2(d) of the Charter***

24. To ensure that the constitutional protection of associational interests of employees in the collective bargaining process is meaningful, section 2(d) of the *Charter* also requires the concomitant protection of their freedom to withdraw their services collectively for the purpose of obtaining improved terms and conditions of employment;
25. The right to strike is constitutionally protected by section 2(d) of the *Charter* because it is an indispensable component of meaningful collective bargaining in our labour relations system;
26. The right to strike, like the right to collective bargaining, is also recognized at international law, including in the International Covenant on Economic, Social and Cultural Rights and the International Labour Organization's Convention No. 87 (Concerning Freedom of Association);

***The Importance of Paid Sick Leave***

27. Paid sick leave is a critically important employee benefit that is found in the collective agreements of all of the Applicant bargaining agents. The current system of sick leave, in various forms, has been a feature of collective agreements in the federal public service for over 40 years, and is the result of numerous trade-offs between the employer and bargaining agents made at the bargaining table. It is a vital part of employee compensation, and is particularly important in protecting employees who are sick or disabled against suffering loss of income during their illness;
28. Paid sick leave is also important to employees' health and well-being. It permits employees to take the necessary time off work to allow them to recover from a

serious or communicable illness, and to ensure that they do not infect their co-workers by attending work while ill. As a benefit, paid sick leave protects the most vulnerable of employees, who may be facing serious illness or disability. Legislative provisions which effectively prevent bargaining over this important issue are a substantial interference with meaningful collective bargaining;

***Impugned Provisions Violate Section 2(d) of the Charter***

29. The impugned provisions, which grant the employer, Treasury Board, the unlimited power to unilaterally impose certain terms and conditions of employment regarding sick leave and short and long-term disability. These provisions substantially interfere with a meaningful process of collective bargaining and violate section 2(d), including in the following respects:

- (a) The impugned provisions of Bill C-59, in particular sections 254-256, 260-262, 267-268, effectively restrict the subjects that can be meaningfully discussed at collective bargaining by granting to Treasury Board the unilateral power to impose terms and conditions of employment relating to sick leave and short and long term disability. Sick leave is a vital and important benefit to employees and has been included in collective agreements for many decades;
- (b) Even if Treasury Board's is unable to reach agreement with the Applicant bargaining agents at the bargaining table on its proposed terms and conditions of employment regarding sick leave and disability programs, the impugned provisions, in particular sections 254-256, 260-262, 267-268, give Treasury Board the unilateral power to:
  - i. establish and modify terms and conditions of employment related to sick leave;
  - ii. establish a short-term disability program;
  - iii. modify any long-term disability program, and

- iv. override existing terms and conditions of employment in collective agreements related to sick leave;
- (c) The impugned provisions, in particular sections 254-256, allow for unilaterally imposed and arbitrary outcomes by granting to Treasury Board an unlimited power to eliminate sick leave all together and erase all banked sick leave credits, thereby undermining the confidence that bargaining agents and their members have in the collective bargaining process;
- (d) The impugned provisions, in particular section 254-256, provide legislative sanction for what would otherwise amount to bad faith bargaining. Even if the parties were to agree on a sick leave proposal at the bargaining table, under the impugned provisions, Treasury Board can later turn around and impose different terms, or modify those agreed to, thereby completely undermining the collective bargaining process;
- (e) Sections 257, 262(1)(b) and 268(1)(b) of Bill C-59, provide that s. 107 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (PSLRA), which requires the employer to observe existing terms and conditions of employment once the notice to bargain is given, does not apply during the application period with respect to terms and conditions of employment established by Treasury Board under Bill C-59. The lack of statutory freeze protection for sick leave and disability further undermines meaningful collective bargaining;
- (f) Sections 256, 258, 259, 262 and 268 of Bill C-59 allow Treasury Board to override any provisions in arbitral awards that are inconsistent with the terms and conditions of employment established by Treasury Board under Bill C-59. Where arbitration is the method of resolving bargaining

impasses between parties, it is a central and constitutionally required part of a collective bargaining process. Overriding arbitral awards is thus contrary to a meaningful process of collective bargaining and undermines the confidence that bargaining agents and their members have in that process;

- (g) By conferring on Treasury Board a unilateral and unlimited power to impose sick leave and disability terms and conditions, the impugned provisions of Bill C-59 set up a collective bargaining process that employees cannot effectively influence and thus make employees' workplace goals with respect to sick leave and disability provisions, unachievable;
  - (h) The impugned provisions fundamentally upset the balance of power in collective bargaining, reducing employees' negotiating leverage, and denying employees any control or influence over the bargaining process with respect to sick leave coverage, a vital and important collective bargaining right to employees and Treasury Board's key concern for this round of bargaining;
30. The impugned provisions of Bill C-59 also effectively prevent recourse to collective strike action by employees without adequate countervailing protections, contrary to s. 2(d) of the *Charter*, which protects the right to strike. The ability to strike allows workers, through collective action, to refuse to work under imposed terms and conditions. The right to strike, at the moment of impasse, is an affirmation of the dignity and autonomy of employees. Despite s. 271 of Bill C-59, the impugned provisions of Bill C-59, by conferring on Treasury Board a unilateral power to modify or remove existing sick leave provisions in collective agreements and impose new sick leave provisions, remove sick leave as an issue over which the Applicants' members can effectively strike.

***The Infringement is Not Justified under Section 1 of the Charter***

31. The infringement of s. 2(d) of the *Charter* does not constitute a reasonable limit demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*, as it neither advances a sufficiently important government objective, nor does it meet the three proportionality requirements of s. 1 of the *Charter*;

***Legislative Provisions***

32. Sections 1, 2(d), 24(1) and 32 of the *Canadian Charter of Rights and Freedoms*
33. Section 52 of the *Constitution Act, 1982*
34. Rule 14 of the *Rules of Civil Procedure*; and
35. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**C. The following documentary evidence will be used at the hearing of the application:**

1. Affidavit of Jamie Dunn, to be sworn;
2. Affidavit of Colin Muisse, to be sworn;
3. Affidavit of Stan Buday, to be sworn;
4. Affidavit of Hélène Paris, to be sworn;
5. Affidavit of Nick Giannakoulis, to be sworn;
6. Affidavit of Scott Chamberlain, to be sworn; and

7. Such further and other affidavits and materials as counsel may advise and this Honourable Court may permit.

Date: June 26, 2015



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THE PROFESSIONAL INSTITUTE OF  
THE PUBLIC SERVICE OF CANADA,  
ET AL.  
Applicants

and ATTORNEY GENERAL OF CANADA  
Respondent

Court File No:

15-64817

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**NOTICE OF APPLICATION**

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Lawyers for the Applicants

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for pour	
William F. Pentney Deputy Minister of Justice and Deputy Attorney General of Canada Sous-Ministre de la Justice et Sous-secrétaire général du Canada	

## **APPENDIX H TO I**



Appendix H

Court File No.: 15-64840

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**PUBLIC SERVICE ALLIANCE OF CANADA, STÉPHANE ALLARD, and  
LAUREN BAERT**

Applicants

-and-



**ATTORNEY GENERAL OF CANADA**

Respondent

**APPLICATION UNDER Rule 14.05 of the *Ontario Rules of Civil Procedure*, s. 2(d), s. 24(1), and 32 of the *Canadian Charter of Rights and Freedoms*, and s. 52 of the *Constitution Act, 1982***

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU**  
by the Applicants. The claim made against you is set out in the following pages.

**THIS APPLICATION** will come on for a hearing on a date to be *determined*  
~~fixed by the Registrar~~ at 161 Elgin Street, Ottawa, ON, K2P 2K1.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer, or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you and your lawyer must appear at the hearing.

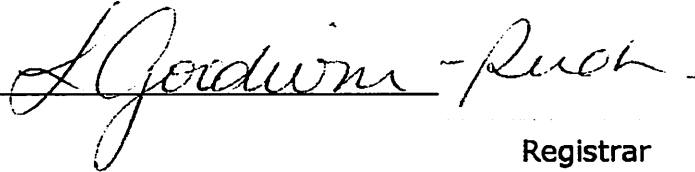
**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

JUN 30 2015

Date: \_\_\_\_\_

Issued by: \_\_\_\_\_



Registrar  
Ontario Superior Court  
161 Elgin Street, 2<sup>nd</sup> Floor  
Ottawa, ON  
K2P 2K1

TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice  
284 Wellington Street  
Ottawa, ON  
K1A 0H8

**APPLICATION****1. THE APPLICANTS MAKE APPLICATION FOR:**

1. A declaration that Division 20 of Part 3 of the *Economic Action Plan 2015 Act, No 1*, SC 2015, c 36 ("Bill C-59"), and in particular sections 253-273, and any related transition provisions in Bill C-59 violate subsection 2(d) of the *Canadian Charter of Rights and Freedoms* ("Charter") and that this violation is not saved by section 1 of the *Charter*;
2. An Order, pursuant to section 52 of the *Constitution Act, 1982*, that the above provisions of Bill C-59 are of no force or effect;
3. An Order staying the operation of the above sections of Bill C-59 until the within Application is finally determined by this Court;
4. In the alternative, an Order pursuant to subsection 24(1) of the *Charter*, reopening any collective agreements between the Public Service Alliance of Canada and Treasury Board that were negotiated while the above provisions of Bill C-59 were in force, to allow the parties to exercise their right to meaningful collective bargaining;
5. The costs of this Application; and,
6. Such further and other relief as counsel may request and this Honourable Court may deem to be just and appropriate.

## **2. THE GROUNDS FOR THE APPLICATION ARE:**

### **The Applicants**

1. The Public Service Alliance of Canada ("PSAC") is the largest federal public sector union in Canada, representing approximately 140,000 employees whose labour relations are governed by the *Public Service Labour Relations Act* ("PSLRA"). PSAC represents employees in the federal core public administration who are employed by the Treasury Board of Canada and other federal public sector employees employed by various separate agencies. PSAC also represents other federally regulated employees, including employees at Crown Corporations whose labour relations are governed by the *Canada Labour Code*;
2. Stéphane Allard is an employee of Treasury Board, working in the position of Deputy Director of Emergency Planning in the Department of Foreign Affairs, Trade and Development. Mr. Allard is a member of the Program and Administrative Services (PA) Group Bargaining Unit, represented by PSAC, and is a member of the PA Group bargaining team. He is directly affected by the above provisions of Bill C-59;
3. Lauren Baert is an employee of Treasury Board, working in the position of Border Services Officer in the Canada Border Services Agency. Ms. Baert is a member of the Border Services (FB) Group Bargaining Unit, represented by PSAC, and is a member of the FB Group bargaining team. She is directly affected by the above provisions of Bill C-59;

**Collective bargaining under the *PSLRA***

4. The *PSLRA* requires the parties to bargain in good faith and make every reasonable effort to enter into a collective agreement, which could include any terms and conditions other than those expressly excluded under the *PSLRA*;
5. Benefits for employees who are absent due to illness ("sick leave") constitute terms and conditions of employment that have consistently been the subject of collective bargaining between Treasury Board and Bargaining Agents representing employees in the federal core public administration, including PSAC;
6. PSAC has negotiated numerous collective agreements with Treasury Board which included provisions regarding sick leave benefits;
7. The sick leave provisions that are currently in force in collective agreements between PSAC and Treasury Board provide for a certain number of sick days each year, which can be carried forward into future years. These sick days are not paid out to employees when they cease employment;
8. The current round of collective bargaining between Treasury Board and PSAC began in early 2014, when Treasury Board served Notices to Bargain on PSAC in respect of five bargaining units represented by PSAC. Bargaining is ongoing;
9. On December 12, 2013, Parliament enacted the *Economic Action Plan*

2013 Act, No 2, SC 2013, c 40 ("Bill C-4"), which amended the *PSLRA* to, *inter alia*:

- a. Give the employer unilateral authority to designate employees as performing essential services, thereby precluding them from any strike activity;
- b. Require the bargaining agent to proceed by way of conciliation/strike in all cases where the employer designates less than 80% of the employees in a bargaining unit as essential, unless the employer agrees otherwise;
- c. Require the bargaining agent to proceed by way of binding interest arbitration where the employer designates 80% or more of the employees in a bargaining unit as essential, regardless of the wishes of the bargaining unit;
- d. Require an interest arbitration board or public interest commission to give preponderance to the following factors when setting compensation levels and other terms and conditions in an arbitral award or a report to the Chairperson, as the case may be:
  - i. Canada's fiscal circumstances relative to its stated budgetary policies; and,
  - ii. The necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;

10. The above provisions of Bill C-4 are subject to a separate *Charter* Application by PSAC;

**Government's Plan to Implement Short-Term Disability Program**

11. In or around 2013, Treasury Board announced its intention to replace existing sick leave benefits for federal public service employees with a short-term disability program;
12. In the months preceding the current round of bargaining, it became clear that the key issue in this round of bargaining would be Treasury Board's intention to eliminate the existing sick leave regime and replace it with a short-term disability program. Treasury Board, PSAC, and other Bargaining Agents issued statements regarding the significance of this issue;
13. After the Notices to Bargain had been served on PSAC, but before bargaining had commenced, Treasury Board sent out mass email communications to employees, announcing its introduction of the Workplace Wellness and Productivity Strategy ("Wellness Strategy"). These communications stated that Treasury Board was in the process of implementing the Wellness Strategy, and that the Wellness Strategy will include short-term disability benefits;
14. On July 7, 2014, PSAC presented a complaint to the Public Service Labour Relations Board, maintaining that Treasury Board violated its duty to bargain in good faith contrary to section 106 of the *PSLRA*. The complaint

alleged that Treasury Board bypassed PSAC and issued mass email communications directly to employees, attempting to exert undue influence on the bargaining process, and that the emails falsely led employees to believe that the contents of the Wellness Strategy, including the introduction of a short-term disability program, were not the proper subject of collective bargaining but rather could be unilaterally implemented by Treasury Board as employer;

15. On April 21, 2015, the Minister of Finance tabled the budget for 2015. In the budget, the Government stated that, if the Bargaining Agents do not agree to introduce a short-term disability program, it would take steps to unilaterally implement such a system within a reasonable timeframe;
16. On June 23, 2015, Parliament enacted Bill C-59, which gave Treasury Board the authority to establish terms and conditions related to sick leave for employees in the core public administration in any bargaining unit, including those represented by PSAC;
17. Bill C-59 provides that every existing term or condition that is inconsistent with those established by Treasury Board will be deemed to be replaced, even if it forms part of a collective agreement or arbitral award, or if it is protected by the statutory freeze on terms and conditions of employment during bargaining pursuant to section 107 of the *PSLRA*;
18. Bill C-59 further gives Treasury Board the authority to establish a short-term disability program for employees in the core public administration in



any bargaining unit, including those represented by PSAC;

19. Bill C-59 provides that the short-term disability program will apply to employees despite any provision of any collective agreement or arbitral award, and despite the statutory freeze on terms and conditions during bargaining pursuant to section 107 of the *PSLRA*;
20. Bill C-59 further provides that Treasury Board may modify any long-term disability program for employees in the core public administration in any bargaining unit, including those represented by PSAC, and that these modifications will apply despite any provision of any collective agreement or arbitral award, and despite the statutory freeze on terms and conditions during bargaining pursuant to section 107 of the *PSLRA*;
21. Bill C-59 provides that any provision of any collective agreement or arbitral award that is inconsistent with the sick leave terms and conditions established by Treasury Board, the short-term disability program, or the modifications to the long-term disability program, will be of no effect;

### **Freedom of Association and the Right to Bargain Collectively**

22. Subsection 2(d) of the *Charter* guarantees the right of unions and employees to act in common to reach shared goals related to workplace issues and terms of employment. The freedom of association is likewise guaranteed by the *Canadian Bill of Rights*;
23. In 2001, the Supreme Court of Canada confirmed that the freedom of

association protects against state action that precludes activity because it is associational in nature, thereby discouraging the collective pursuit of common goals. This ruling conclusively established that subsection 2(d) goes beyond merely providing individual workers with the right to engage in associational activities and includes protection of the collective activities of their associations;

24. In 2007, the Supreme Court of Canada ruled that the freedom of association includes the right to collectively bargain. Subsection 2(d) of the *Charter*, thus, constrains the exercise of legislative powers that seek to restrain the scope of collective bargaining. Where legislative measures or government conduct substantially interfere with collective bargaining by restricting the ability of employees to engage in a process of good faith negotiations in respect of important terms and conditions of employment, there is a violation of the freedom of association;
25. In 2015, the Supreme Court of Canada ruled that the right to strike is protected by subsection 2(d) of the *Charter*. The Court held that the right to strike is an essential part of a meaningful collective bargaining process in the Canadian system of labour relations;

**Violations of the Freedom of Association and the Right to Bargain Collectively**

26. Bill C-59 imposes significant limits on the freedom of employees to associate and engage in collective bargaining, violating the subsection 2(d) rights of both PSAC and its members;

27. Bill C-59 substantially interferes with collective bargaining by, first, giving Treasury Board authority to invalidate existing collective agreements, consequently undermining the past collective bargaining processes that led to those agreements, and, second, by prohibiting the parties from negotiating collective agreements that are inconsistent with the terms established by Treasury Board, thereby undermining future collective bargaining processes;
28. This constitutes substantial interference, as it empowers Treasury Board to remove important subject matter from the scope of collective bargaining. Bill C-59 was enacted during an ongoing round of collective bargaining in which both Treasury Board and the Bargaining Agents, including PSAC, indicated that sick leave was the most significant issue to be bargained. In that context, Bill C-59 gave Treasury Board the authority to unilaterally establish terms and conditions related to sick leave, establish a short-term disability program, and modify the existing long-term disability program;
29. The manner in which Treasury Board is authorized to remove this important subject matter from the scope of collective bargaining denies employees any meaningful process:
  - a. Bill C-59 completely denies employees' right to good faith bargaining, as it gives Treasury Board, the employer, unilateral authority to establish terms and conditions related to sick leave, establish a short-term disability program, and modify the long-term disability program;

- b. If and when Treasury Board exercises this authority, all terms in collective agreements that are inconsistent with the terms established by Treasury Board are invalidated, thereby nullifying the outcomes of past collective bargaining processes;
  - c. Bill C-59 does not contemplate any consultation with bargaining agents regarding the sick leave terms and conditions established by Treasury Board;
  - d. Bargaining agents are only provided a limited right to make recommendations regarding the terms of the short-term disability program after the program is established and thus after the existing sick leave terms and conditions have been invalidated;
  - e. Bill C-59 expressly overrides the statutory freeze on terms and conditions during bargaining pursuant to section 107 of the *PSLRA*, and thus fails to preserve the *status quo* while the parties are engaged in collective bargaining;
  - f. By granting Treasury Board the authority to unilaterally remove important terms and conditions from the scope of collective bargaining, Bill C-59 also denies the right of employees to bargain these terms and conditions to the points of impasse, and to strike regarding these terms and conditions;
30. Moreover, regardless of when or whether Treasury Board exercises its authority to establish sick leave terms and conditions, establish a short-

term disability program, and modify the long-term disability program, the very existence of this authority substantially interferes with employees' right to collective bargaining. Meaningful collective bargaining cannot take place in a context in which Treasury Board possesses the authority to unilaterally establish these important terms and conditions, regardless of what occurs during bargaining. Thus, the current collective bargaining process is rendered effectively meaningless;

31. The above-noted violation of subsection 2(d) of the *Charter* is particularly egregious in the context of the recent amendments to the *PSLRA* as enacted by Bill C-4, which already dramatically altered the collective bargaining power relationships in favour of the employer;
32. The above-noted violation of subsection 2(d) of the *Charter* does not constitute a reasonable limit demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*, as it either fails to advance a sufficiently important governmental objective or fails to meet the proportionality requirements of section 1 of the *Charter*. Among other things, Bill C-59 fails to satisfy section 1 for the following reasons:
  - a. Bill C-59 was not enacted in pursuit of a pressing and substantial objective. The Government has not even suggested that this legislation is necessary to respond to a purported fiscal crisis or emergency, or to protect essential public services. Rather, Bill C-59 serves the bargaining objectives of Treasury Board as employer. At best, Bill C-59's objectives are cost savings and increasing

management rights, which do not constitute pressing and substantial objectives;

- b. Moreover, Bill C-59 is not a law of general application, but rather it specifically targets associational activity, and therefore it cannot have been enacted for a pressing and substantial objective. Bill C-59 expressly authorizes Treasury Board to remove rights from bargaining units and to nullify existing collective agreements, arbitral awards, and the statutory freeze pursuant to section 107 of the *PSLRA*. Thus, its objective is to interfere with collective bargaining, both by invalidating the outcomes of past collective bargaining processes, and by precluding future collective bargaining;
- c. In the event that it is determined that there is a pressing and substantial objective, Bill C-59 fails to minimally impair freedom of association in order to achieve that objective. There is no evidence that the Government cannot achieve its objective without authorizing Treasury Board to invalidate the outcomes of past collective bargaining and preclude future collective bargaining on these important terms and conditions;
- d. There is no proportionality between the Government's objective and the measures enacted by Bill C-59. Bill C-59 constitutes egregious interference in the normal collective bargaining process, permitting the employer to unilaterally set the terms and conditions that

constituted the key issue between the parties in the current round of bargaining. This legislation empowers the employer to achieve its top bargaining priority without having to make any concessions or bargain to the point of impasse, and has effectively rendered the collective bargaining process meaningless;

**Legislative Provisions**

- 33. Sections 1, 2(d), 24(1), and 32 of the *Charter*;
- 34. Section 52 of the *Constitution Act, 1982*;
- 35. Rule 14 of the *Rules of Civil Procedure*; and,
- 36. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

1. The affidavit of Liam McCarthy, to be sworn; and,
2. Such further and other affidavits and materials as counsel may advise and this Honourable Court may permit.

Dated June 30, 2015

**RAVEN, CAMERON, BALLANTYNE  
& YAZBECK LLP/s.r.l.**

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Lawyers for the Applicants



**Public Service Alliance of Canada *et al.***

-and-

**Attorney General of Canada**

Applicants

Respondent

Court File No.: 15-64840

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

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**NOTICE OF APPLICATION**

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Lawyers for the Applicants

Court File No. 15-64817

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, COLIN MUISE,  
STAN BUDAY, CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES, NICK  
GIANNAKOULIS, ASSOCIATION OF CANADIAN FINANCIAL OFFICERS, CANADIAN  
MERCHANT SERVICE GUILD, ASSOCIATION OF JUSTICE COUNSEL, FEDERAL  
GOVERNMENT DOCKYARD TRADES AND LABOUR COUNCIL (ESQUIMALT),  
FEDERAL GOVERNMENT DOCKYARD TRADES AND LABOUR COUNCIL (EAST),  
CANADIAN FEDERAL PILOTS ASSOCIATION, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, CANADIAN AIR TRAFFIC CONTROL ASSOCIATION,  
UNIFOR LOCAL 588-G AND UNIFOR LOCAL 2182

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER Rule 14.05 of the *Ontario Rules of Civil Procedures*,  
s. 2(d), s. 24(1), and 32 of the *Canadian Charter of Rights and Freedoms*,  
and s. 52 of the *Constitution Act*, 1982

**NOTICE OF MOTION OF THE APPLICANTS**  
(Motion for Injunctive Relief)  
(pursuant to Rules 14.05 and 40 of the *Rules of Civil Procedure*)

The Applicants, will make a motion to this Honourable Court, on a date to be set by the  
Court, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, ON, K2P 2K1.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- ☐ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☒ orally.

**THE MOTION IS FOR:**

1. An Order staying the operation of Division 20 of the *Economic Action Plan 2015 Act, No. 1*. ("Bill C-59") to allow bargaining to continue unimpeded until the final disposition of this Application and all appeals have been exhausted;
2. Costs of this motion to be fixed by the judge hearing the application; and
3. Such further and other orders as the circumstances of this case may require, and this Honourable Court may deem to be just and appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

**BACKGROUND FACTS**

1. The Applicants, who are federal public service unions and individual members of some of those unions, are currently in the process of negotiating collective agreements with the Treasury Board Secretariat ("Treasury Board"). For the majority of the Applicants' bargaining units, bargaining with Treasury Board for the current round of negotiations began in the second half of 2014.

2. Depending on the start of bargaining and the frequency of meetings, the number of bargaining dates held for each of the Applicants' respective bargaining units has varied. For example, for the Public Institute of the Public Service of Canada's ("Institute") six bargaining units affected by the legislation, there have been between eight and twelve bargaining dates with Treasury Board.

3. At present, bargaining is ongoing and there are many issues that remain to be discussed, not the least of which is pay and compensation.

4. Treasury Board's key concern in the current round of bargaining has been its proposal to modify the current system of sick leave, which has been a part of the Applicants' collective agreements since the late 1960s, and introduce a new short-term disability plan ("STDP") that would be operated by a third-party insurer and outside the collective agreements. Under Treasury Board's current proposal at the table, sick leave credits would be decreased from fifteen days a year, to six. As well, employees would no longer be able to bank unused sick leave credits from year to year. Benefits under the STDP could only be accessed after a 7 day waiting period, which is unpaid.

5. While Treasury Board has tabled and presented this proposal, bargaining on this issue from the Applicants' perspective is far from complete.

6. In the midst of bargaining, on May 7, 2015, Bill C-59 was introduced at first reading. Division 20 of Bill C-59 grants to Treasury Board the power to unilaterally impose certain terms and conditions of employment regarding sick leave and short and long-term disability on federal public servants in the core public administration. The terms and conditions drafted by Treasury Board are to be unilaterally made part of collective agreements, overriding existing provisions,

future provisions which may be agreed to in bargaining, or arbitral awards. As well, these terms and conditions can override statutory freeze protection.

7. On June 23, 2015, Bill C-59 received Royal Assent.

8. On June 26, 2015, the Applicants commenced an application to the Court (amended June 30, 2015) pursuant to Rule 14.05 of the *Rules of Civil Procedure*, ss. 1, 2(d), 24(1) and s. 32 of the *Canadian Charter of Rights and Freedoms* (the "Charter"), and s. 52 of the *Constitution Act, 1982*, for the following relief:

- (a) A declaration that Division 20 (s. 253 – s. 273) of Bill C-59 infringes and denies the rights and freedoms guaranteed by section 2(d) of the *Charter*, insofar as it substantially interferes with the rights of employees to engage in a meaningful process of collective bargaining and prevents employees from participating in strike action over the issue of sick leave and/or disability coverage, and that such infringement cannot be demonstrably justified as a reasonable limit pursuant to section 1 of the *Charter*.
- (b) A declaration that, insofar as the impugned provisions infringe and deny the rights and freedoms guaranteed by s. 2(d) pursuant to section 52 of the *Constitution Act*, the above provisions of Bill C-59 are of no force or effect;
- (c) An Order pursuant to subsection 24(1) of the *Charter*, providing for such relief as is appropriate in the circumstances in order to remedy the harm to the collective bargaining process arising from the impugned provisions, whether or not a collective agreement was or has been entered into;

(d) The costs of this Application; and

(e) Such further and other relief as counsel may request and this Honourable Court may deem to be just and appropriate.

9. As alleged in the Notice of Application, Division 20 of Bill C-59 infringes the section 2(d) *Charter* rights of the Applicants and their members. The impugned provisions substantially interfere with a meaningful process of collective bargaining. The infringement of s. 2(d) of the *Charter* does not constitute a reasonable limit demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*.

10. Because the impugned provisions of Bill C-59 foreclose meaningful bargaining on these and other issues, on June 29, 2015, Debi Daviau, President of the Institute, formally wrote to Manon Brassard, the Assistant Deputy Minister of Compensation and Labour Relations at Treasury Board requesting that Treasury Board confirm that it will not use its powers under Division 20 of Bill C-59 until such time as a Court has determined its constitutionality.

11. On July 22, 2015, Ms. Brassard replied to Ms. Daviau's letter and refused to confirm that Treasury Board would not use its powers under Bill C-59.

12. As well, the President of Treasury Board, Tony Clement, has publically stated that any deal on the new sick leave regime must be reached before the federal election, which is scheduled for October 19, 2015.

13. Pursuant to section 254(2) of Bill C-59, the content of the terms and conditions Treasury Board can unilaterally impose includes "the disposition of unused hours of sick leave that stand to an employee's credit", as well as the number of hours of sick leave and the use of sick leave credits from year to year. Pursuant to s. 256, these terms and conditions are deemed to be incorporated in collective agreements or arbitral awards on the effective date, which is the date specified in an order unilaterally made by Treasury Board on which the short-term disability program becomes effective. As a result of the operation of these provisions, Treasury Board has the power to erase the existing sick banks of the Applicants' members at any time and eliminate sick leave all together, should they so choose.

#### INJUNCTIVE RELIEF

14. In order to obtain a stay or an interlocutory injunction, the moving party must demonstrate:

- a) a serious issue to be tried;
- b) that the moving party will suffer irreparable harm if the relief is not granted; and
- c) the balance of convenience favours the moving party.

15. There is a serious issue to be tried in this Application. The Applicants are challenging the constitutionality of legislation which substantially interferes with their right to meaningful collective bargaining regarding an important compensatory benefit for their members that also relates to those members' health and well-being.

16. The right to collective bargaining is constitutionally protected by section 2(d) of the *Charter*. Legislation, such as Bill C-59, which substantially interferes with a meaningful process of collective bargaining by, for example, reducing employees' negotiating power and leverage at the bargaining table, restricting the subjects that can be discussed, imposing arbitrary outcomes or making employees' workplace goals unachievable, is inconsistent with the guarantee of the freedom of association enshrined in section 2(d).

17. The impugned provisions, which grant Treasury Board, the power to unilaterally impose certain terms and conditions of employment, substantially interfere with a meaningful process of collective bargaining and violate section 2(d) and are not saved by section 1 of the *Charter*.

18. Without injunctive relief, the Applicants and their members will suffer irreparable harm. Some of these harms include but are not limited to the following:

- a) Bill C-59 erodes the bargaining relationships between the parties and undermines the core values of trust and respect that are critical to a sustained collective bargaining relationship;
- b) It undermines the confidence that the Applicants' and their members have in the collective bargaining process and in the effectiveness of that process to represent their interests;
- c) It harms the relationship between the trade union and its members. By eroding the Applicants' bargaining power and leverage in negotiations, Bill C-59 undermines the capacity of the Applicants to achieve bargaining goals reflecting member needs, priorities and expectations;



- d) It also harms the relationship between the trade union and its members by undermining the confidence that members have in the ability of the Applicants' bargaining teams and leadership to represent their interests and be their voice in bargaining; and
- e) By granting Treasury Board the unilateral power to eliminate sick days and erase sick banks, it creates anxiety and insecurity for individual members of the Applicants who may have disabilities or suffer from serious health conditions, and undermines their sense of well-being.

19. In light of the nature of collective bargaining and the fact that negotiation is about compromise and trade-offs, the harm is not just with respect to the issues of sick leave and short-term disability but extends to all issues that have been tabled, including compensation, since the Applicants have lost the ability to leverage sick leave in exchange for some other issue. With the unilateral power to impose terms and conditions related to sick leave and short-term disability, its key issue for this round of bargaining, Treasury Board no longer has any incentive to make the compromises or trade-offs that it would have otherwise had to, in order to achieve its desired goals at the bargaining table. There is no way to measure or compensate for the loss of leverage at the bargaining table and what the bargaining agents may have been able to achieve through a meaningful bargaining process, but for C-59.

20. As well, since the impugned legislation gives Treasury Board the power to erase sick banks and eliminate sick leave at a date to be unilaterally set by itself, the Applicants' members can suffer irreparable harm from the loss of long-standing accrued benefits at any time. Once this current system of sick leave and sick banks is dismantled it will be difficult, if not impossible, to recreate.

21. The damage cause by Bill C-59, including to the bargaining process, the bargaining relationships between the parties and to the confidence of the Applicants' members in the process and their bargaining teams cannot be compensated in damages.

22. Given that the Applicants' collective agreements have expired and that bargaining is ongoing, with a number of bargaining dates scheduled in September and October 2015, for example, this harm is immediate.

23. The balance of convenience lies in favour of the Applicants. The relief being sought will not harm the public interest. The public interest in meaningful collective bargaining and maintaining the status quo while this Application is being decided outweighs any public interest in the impugned legislation or any alleged public interest in theoretical future budgetary savings.

24. While, as set out above, the Applicants will suffer irreparable harm, the Respondent will suffer no harm if the operation of Division 20 of Bill C-59 is delayed until such time as the Application can be heard. The Applicant is only asking that the pre-C-59 status quo with respect to sick leave and bargaining be maintained until such time as the Application, and any possible appeals, are determined. At the bargaining table, Treasury Board has indicated that implementation of a STDP may not be until 2017. If the operation of Bill C-59 is enjoined, the parties will simply proceed with bargaining in the ordinary course, with the statutory freeze in place with respect to the current sick leave provisions in collective agreements, until such time as the parties reach a new agreement or reach impasse.

#### OTHER

25. In the event that an undertaking is required, the Applicants undertake to abide by any order that this Court may make as to damages in case this Court shall hereafter be of the opinion

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that the Respondent has sustained any damages by reason of the injunction which the Applicants ought to pay.

26. The Applicants further undertake to litigate this Application without delay.
27. Sections 1, 2(d) and 24 of the *Canadian Charter of Rights and Freedoms*.
28. Section 52 of the *Constitution Act*.
29. Section 101 of the *Courts of Justice Act*.
30. Rules 14.05, 38, and 40 of the Ontario *Rules of Civil Procedure*.
31. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:**

- (a) the Affidavit of Joseph Rose, sworn August 4, 2015;
- (b) the Affidavit of H  l  ne Paris, sworn August 6, 2015;
- (c) the Affidavit of Stan Buday, sworn August 6, 2015;
- (d) the Affidavit of Scott Chamberlain, sworn August 6, 2016;
- (e) the Affidavit of Nick Giannakoulis, sworn August 6, 2015;
- (f) the Affidavit of Scott Milne, sworn August 10, 2015;
- (g) the Affidavit of George Smith, sworn August 7, 2015;
- (h) the Affidavit of Jamie Dunn, sworn August 10, 2015; and

- (i) such further and other evidence as counsel may advise and the Honourable Court may deem just.

August 10, 2015

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**AND TO: Alain Prefontaine**  
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**Per: J. Sanderson Graham, LSUC #24754L**  
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Solicitors for the Respondent

THE PROFESSIONAL INSTITUTE OF THE  
PUBLIC SERVICE OF CANADA ET AL.  
Applicants

and

ATTORNEY GENERAL OF CANADA  
Respondent

Court File No: 15-6487

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**NOTICE OF MOTION**  
**(ON A DATE TO BE SET BY THE COURT)**

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Counsel for the Applicants

## **APPENDIX J TO K**

Court File No.: 15-64840

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA, STÉPHANE ALLARD and LAUREN  
BAERT**

**Applicants**

**- and -**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

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**NOTICE OF MOTION**

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**TAKE NOTICE** that the Applicants will make a motion to a Judge on a date to be determined, at the Ottawa Court House, 161 Elgin Street, Ottawa, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order staying the operation of sections 253-273 of the *Economic Action Plan Act 2015, No. 1*, SC 2015, c 36 ("Bill C-59"), until the Applicants' Application is finally determined;
2. The costs of the present Motion to be fixed by the Applications Judge; and,
3. Such further and other relief as this Honourable Court deems just and appropriate.

**THE GROUNDS FOR THIS MOTION** are:Background

4. The Public Service Alliance of Canada ("PSAC") is the largest federal public sector union in Canada. PSAC is certified under the *Public Service Labour Relations Act* ("PSLRA") as the bargaining agent for approximately 100,000 employees in five bargaining units employed by Her Majesty the Queen in Right of Canada as Represented by Treasury Board ("Treasury Board" or "Employer").
5. Since the first collective agreement reached between PSAC and Treasury Board, all collective agreements between these parties have included provisions for benefits when employees are absent due to illness ("sick leave"). The current collective agreements provide for 15 days of paid sick leave per year. Earned but unused sick days can be carried forward into future years, but have no monetary value and cannot be cashed out by employees when they depart the federal public service.
6. Notice to bargain was served by Treasury Board in respect of the bargaining units represented by PSAC between February and April, 2014. In the months preceding the current round of bargaining, Treasury Board indicated its intention to eliminate banked sick leave in the federal public service and replace the existing regime with a short-term disability program. It became clear that the key issue in the current round of collective bargaining would be Treasury Board's intention to make this change.
7. In April and May, 2014, after Notice to Bargain was served but before the parties had exchanged bargaining proposals, Treasury Board sent out mass email communications to employees, announcing the introduction of the Workplace Wellness and Productivity Strategy ("Wellness Strategy"). The terms of the Wellness Strategy, as set out on a Treasury Board website, included a number of sick days to be provided annually, a short-term disability program, and a retendered long-term disability program. The



emails and website clearly stated that the Employer was in the process of implementing the Wellness Strategy, and that the Wellness Strategy will include a short-term disability program.

8. PSAC wrote to the Employer to express its position that the Employer was obligated to bargain the terms of the Wellness Strategy, and that its email communications to employees were misleading, giving the impression that these terms of the Wellness Strategy were a *fait accompli* rather than bargaining proposals. In July, 2014, PSAC presented a complaint to the Public Service Labour Relations Board, alleging that the Employer's emails falsely led employees to believe that the contents of the Wellness Strategy, including the introduction of a short-term disability program, were not the proper subject of collective bargaining but rather could be unilaterally implemented by the Employer.
9. The Employer's belief that it was able to unilaterally implement a short-term disability program was further confirmed by its bargaining proposals tabled when bargaining began in July, 2014. The Employer's proposal for "Sick Leave" was as follows for all bargaining units represented by PSAC:

As a result of the Government's announcement to implement a Short-term Disability Plan, the Employer wishes to discuss the consequential changes to the sick leave provisions, a transition approach for sick leave banks, as well as, any other required changes to other provisions in the collective agreement. [Emphasis added.]

10. In September, 2014, the Employer provided written proposals regarding its short-term disability program, stating that it would "reside outside the collective agreement". PSAC Negotiators maintained that the Employer was required to bargain the issue of sick leave and a short-term disability program, and expressed concern that the Employer created the impression that it was not prepared to bargain the introduction of a short-term disability program, but rather planned to implement it regardless of what happened at the bargaining tables.

11. On April 21, 2015, the Minister of Finance tabled the budget for 2015. In the budget, the Government stated that, if the bargaining agents do not agree to introduce a short-term disability program, it would take steps to implement such a system within a reasonable timeframe.
  12. By that time, PSAC and Treasury Board had engaged in 15 days of bargaining. The parties were still in the initial stages of bargaining: they had discussed non-monetary issues, and the Employer had presented its initial monetary proposal, but PSAC had not yet presented its monetary proposal.
  13. The budget reported \$900 million in savings in the current fiscal year as a result of the replacement of sick leave with a short-term disability program. Following the tabling of the budget, President of Treasury Board Tony Clement made statements in the media that the "900 million is sacrosanct", and that this figure was not negotiable. Pierre Poilievre, Minister of Employment and Social Development, made statements in the media that the \$900 million in savings is "set in stone".
- Bill C-59**
14. On June 23, 2015, Parliament enacted Bill C-59, which gave Treasury Board the authority to establish terms and conditions related to sick leave for employees in the core public administration in any bargaining unit, including those represented by PSAC.
  15. Bill C-59 provides that every existing term or condition that is inconsistent with those established by Treasury Board will be deemed to be replaced, even if it forms part of a collective agreement or arbitral award, or if it is protected by the statutory freeze on terms and conditions of employment during bargaining pursuant to section 107 of the *PSLRA*.
  16. Bill C-59 further gives Treasury Board the authority to establish a short-term disability program for employees in the core public administration in any bargaining unit, including those represented by PSAC.

17. Bill C-59 provides that the short-term disability program will apply to employees despite any provision of any collective agreement or arbitral award, and despite the statutory freeze on terms and conditions during bargaining pursuant to section 107 of the *PSLRA*.
18. Bill C-59 further provides that Treasury Board may modify any long-term disability program for employees in the core public administration in any bargaining unit, including those represented by PSAC, and that these modifications will apply despite any provision of any collective agreement or arbitral award, and despite the statutory freeze on terms and conditions during bargaining pursuant to section 107 of the *PSLRA*.
19. Bill C-59 provides that any provision of any collective agreement or arbitral award that is inconsistent with the sick leave terms and conditions established by Treasury Board, the short-term disability program, or the modifications to the long-term disability program, will be of no effect.
20. On June 30, 2015, PSAC filed a Notice of Application, alleging that Bill C-59 infringes section 2(d) of the *Canadian Charter of Rights and Freedoms* ("Charter"). The Application seeks the following relief:
  - a. A declaration that Division 20 of Part 3 of Bill C-59, and in particular sections 253-273, and any related transition provisions in Bill C-59 violate subsection 2(d) of the *Charter* and that this violation is not saved by section 1 of the *Charter*;
  - b. An Order, pursuant to section 52 of the *Constitution Act, 1982*, that the above provisions of Bill C-59 are of no force or effect;
  - c. An Order staying the operation of the above sections of Bill C-59 until the within Application is finally determined by this Court;
  - d. In the alternative, an Order pursuant to subsection 24(1) of the *Charter*, rescinding any collective agreements between PSAC and Treasury Board that were negotiated while the above provisions

of Bill C-59 were in force, to allow the parties to exercise their right to meaningful collective bargaining;

- e. The costs of this Application; and,
- f. Such further and other relief as counsel may request and this Honourable Court may deem to be just and appropriate.

The test for an interlocutory injunction is met

21. The Court will issue an interlocutory injunction in the event that the following elements are satisfied:
  - a. There is be a serious issue to be tried;
  - b. Irreparable harm will result to the Applicants if the injunction is not granted and the Application is ultimately successful; and,
  - c. The balance of convenience favours granting the injunction.
22. These criteria are met in the present case.
23. There is a serious issue to be tried in the Applicants' Application. Sections 253-273 of Bill C-59 violate section 2(d) of the *Charter*, as they constitute substantial interference in the Applicant's right to collective bargaining. These provisions give Treasury Board authority to unilaterally invalidate provisions in existing collective agreements, consequently undermining the past collective bargaining processes that led to those agreements. These provisions also undermine future collective bargaining processes by prohibiting the parties from negotiating terms that are inconsistent with those unilaterally imposed by Treasury Board.
24. Bill C-59 authorizes Treasury Board to remove important subject matter from the scope of collective bargaining in a manner that denies employees and bargaining agents any meaningful process. This substantial interference in

the collective bargaining process cannot be saved under section 1 of the Charter.

25. If a stay is not granted, irreparable harm will result to the Applicants. Bill C-59 was enacted while the parties were in the midst of an ongoing round of collective bargaining. Thus, the key bargaining issue was placed within the Employer's unilateral authority while PSAC remains under a duty to bargain in good faith and make every reasonable effort to enter into a collective agreement. Thus, if a stay is not granted, PSAC is forced to continue bargaining in a context in which meaningful collective bargaining is significantly undermined.
26. In addition, the following harms that have already resulted from Bill C-59 will continue in the event that a stay is not granted:

- a. Bargaining regarding the issue of sick leave is rendered meaningless. There is a disincentive for Employer negotiators to bargain, since they can obtain their desired outcome without any concessions or trade-offs.

- b. Meaningful bargaining of other provisions in the collective agreements is also harmed: the dynamics of bargaining are dramatically altered by Bill C-59 in a manner that gives the Employer a major advantage and seriously disadvantages PSAC.
- c. Bill C-59 has communicated to PSAC and its members that the collective bargaining process and the negotiations taking place at the bargaining table are irrelevant. If the Employer is permitted to unilaterally dictate the outcome of its top bargaining priority in this round of bargaining, it sends the message that the Employer is willing to use this tactic whenever it has a bargaining objective it considers significant.

- d. Bill C-59 has also undermined members' confidence in PSAC and its ability to meaningfully represent their interests in one of the

most important aspects of its function as a Union—negotiating the collective agreement. The passage of Bill C-59 has diminished the role of PSAC as a voice for employees, and has caused a feeling of powerlessness among PSAC bargaining representatives and members.

27. These and other harms caused by Bill C-59 cannot be compensated by damages. The harm to the current collective bargaining process cannot be remedied in the event that the stay is not granted and the Application is successful.
28. The balance of convenience favours the granting of the stay. Division 20 of Bill C-59 is not a law of general application, but rather is targeted specifically at bargaining units currently in collective bargaining with Treasury Board. Thus, there will be no harm to the public interest in granting the stay; indeed, a stay will promote the public interest in permitting meaningful collective bargaining to continue.
29. The Applicants will suffer irreparable harm in the event that a stay is not granted, whereas the Respondent will not suffer any harm by the granting of a stay. A stay of sections 253-273 of Bill C-59 simply preserves the status quo and permits collective bargaining to continue until the constitutionality of those provisions is determined. Moreover, the Employer has indicated at the bargaining tables that it will not be in a position to implement the short-term disability program until 2017 at the earliest. Thus, there will be no impact on the Employer by the granting of the stay, except preventing the Employer from gaining a significant advantage in the current round of collective bargaining.
30. In the event that an undertaking is required, the Applicants undertake to abide by any order that this Court may make as to damages in case this Court shall hereafter be of the opinion that the Respondent has sustained any damages by reason of the injunction which the Applicants ought to pay.

31. The Applicants further undertake to litigate this Application without delay.
32. Sections 1, 2(d) and 24 of the *Canadian Charter of Rights and Freedoms*.
33. Section 52 of the *Constitution Act*.
34. Section 101 of the *Courts of Justice Act*, RSO 1990, c C.43.
35. Rules 37, 39, and 40 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.
36. Such further and other grounds as counsel may submit and this Honourable Court may allow.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- 37. Affidavit of Liam McCarthy, sworn on August 10, 2015, and exhibits thereto;
- 38. Affidavit of George C.B. Smith, sworn on August 7, 2015, and exhibits thereto;
- 39. Affidavit of R. Scott Milne, sworn on August 10, 2015, and exhibits thereto;
- 40. Affidavit of Joseph Rose, sworn on August 4, 2015, and exhibits thereto; and,
- 41. Such further and other evidence as counsel may submit and this Honourable Court may allow.

Dated this <sup>10</sup> day of August, 2015.

**RAVEN, CAMERON, BALLANTYNE & YAZBECK LLP/s.r.l.**

Barristers & Solicitors

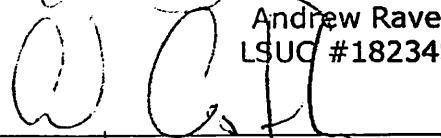
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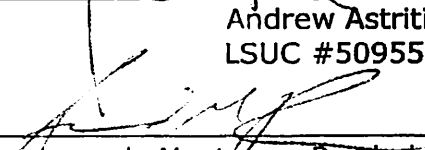
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*Sick Leave**Congés de maladie*

Sick leave

**254.** (1) Despite the *Public Service Labour Relations Act*, the Treasury Board may, during the period that begins on a day to be fixed by order made under subsection (3) and that ends immediately before the effective date, in the exercise of its responsibilities under section 11.1 of the *Financial Administration Act*, establish terms and conditions of employment related to the sick leave of employees in any particular bargaining unit and modify any such term or condition that is established during that period.

**254.** (1) Malgré la *Loi sur les relations de travail dans la fonction publique*, le Conseil du Trésor peut, dans l'exercice des attributions que lui confère l'article 11.1 de la *Loi sur la gestion des finances publiques* et au cours de la période débutant à la date fixée par décret pris en vertu du paragraphe (3) et se terminant immédiatement avant la date de mise en oeuvre, établir les conditions d'emploi des fonctionnaires faisant partie d'une unité de négociation donnée en ce qui touche les congés de maladie et les modifier.

Congés de maladie

Clarification

- (2) The terms and conditions of employment may include ones that are related to
- (a) the number of hours of sick leave to which an employee is entitled in a fiscal year;
  - (b) the maximum number of hours of unused sick leave that an employee may carry over from one fiscal year to the next fiscal year; and
  - (c) the disposition of unused hours of sick leave that stand to an employee's credit immediately before the effective date.

(2) Les conditions d'emploi peuvent notamment viser ce qui suit :

Précision

- a) le nombre d'heures de congé de maladie auxquelles les fonctionnaires ont droit, par exercice;
- b) le nombre maximal d'heures de congé de maladie non utilisées au cours d'un exercice que les fonctionnaires peuvent reporter au prochain exercice;
- c) le sort des heures de congé de maladie non utilisées qui sont au crédit des fonctionnaires immédiatement avant la date de mise en oeuvre.

Order in council

(3) The Governor in Council may, by order made on the recommendation of the President of the Treasury Board, specify a day for the purposes of subsection (1).

(3) Le gouverneur en conseil peut, par décret pris sur la recommandation du président du Conseil du Trésor, fixer une date pour l'application du paragraphe (1).

Décret

Contractual language

**255.** Every term and condition of employment that is established or modified as permitted by section 254 must be drafted in a manner that permits its incorporation into a collective agreement or arbitral award that is binding on the employees in the bargaining unit.

**255.** Les conditions d'emploi établies ou modifiées en vertu de l'article 254 sont libellées de façon à pouvoir être incorporées à toute convention collective ou décision arbitrale liant les fonctionnaires faisant partie de l'unité de négociation.

Libellé

Incorporation into collective agreement and arbitral award

**256.** Every term and condition of employment that is established or modified as permitted by section 254 is deemed, on the effective date, to be incorporated, as it is

drafted to comply with section 255, into any collective agreement or arbitral award that is binding on the employees in the bargaining unit and that is in force on that date. That term or condition applies despite any provision to the contrary in the collective agreement or arbitral award.

**256.** Les conditions d'emploi établies ou modifiées en vertu de l'article 254 sont réputées, à la date de mise en oeuvre, incorporées telles qu'elles sont libellées en application de l'article 255 à toute convention collective ou décision arbitrale liant les fonctionnaires faisant partie de l'unité de négociation qui est en vigueur à cette date et elles s'appliquent malgré toute disposition contraire de la convention collective ou de la décision arbitrale.

Incorporation aux conventions collectives et décisions arbitrales

Replacement of terms and conditions

**257.** Every term and condition of employment of the employees in the bargaining unit that is continued in force, on the effective date, by section 107 of the *Public Service Labour Relations Act* and that is inconsistent with a term or condition of employment that is established as permitted by section 254 in respect of those employees is, on the effective date, replaced by that term or condition, as it is drafted to comply with section 255.

**257.** Les conditions d'emploi des fonctionnaires faisant partie de l'unité de négociation qui sont maintenues en vigueur à la date de mise en oeuvre par l'effet de l'article 107 de la *Loi sur les relations de travail dans la fonction publique* et qui sont incompatibles avec les conditions d'emploi établies en vertu de l'article 254 à l'égard de ces fonctionnaires sont, à la date de mise en oeuvre, remplacées par ces conditions d'emploi, telles que celles-ci sont libellées en application de l'article 255.

Remplacement de conditions d'emploi

Provisions are of no effect — arbitral awards during application period

**258.** (1) If an arbitral award that is binding on the employees in the bargaining unit is made during the application period and it contains a provision that is inconsistent with the terms and conditions of employment related to sick leave that applied to those employees immediately before the day on which the arbitral award is made, that provision is of no effect in relation to any period during the application period.

**258.** (1) Sont inopérantes à l'égard de toute période comprise dans la période d'application les dispositions de toute décision arbitrale liant les fonctionnaires faisant partie de l'unité de négociation rendue au cours de la période d'application qui sont incompatibles avec les conditions d'emploi relatives aux congés de maladie qui s'appliquent à ces fonctionnaires immédiatement avant la date à laquelle la décision arbitrale est rendue.

Dispositions inopérantes : décisions arbitrales au cours de la période d'application

Application

(2) Subsection (1) applies only in respect of terms and conditions of employment that are established or modified as permitted by section 254 in respect of the employees in the bargaining unit.

(2) Les conditions d'emploi visées au paragraphe (1) sont celles qui sont établies et, le cas échéant, modifiées en vertu de l'article 254 à l'égard des fonctionnaires faisant partie de l'unité de négociation.

Application

Provisions are of no effect — arbitral awards after application period

**259.** (1) If an arbitral award that is binding on the employees in the bargaining unit is made after the expiry of the application period and it contains a provision that applies retroactively in relation to any period during the application period, any such provision that is inconsistent with the terms and conditions of employment related to sick leave that applied to those employees immediately before the expiry of the application period is of no effect in relation to that period during the application period.

**259.** (1) Sont inopérantes à l'égard de toute période comprise dans la période

Dispositions inopérantes : décisions arbitrales après la

d'application les dispositions de toute décision arbitrale liant les fonctionnaires faisant partie de l'unité de négociation rendue après l'expiration de la période d'application qui s'appliquent rétroactivement à l'égard de cette période comprise dans la période d'application et qui sont incompatibles avec les conditions d'emploi relatives aux congés de maladie qui s'appliquent à ces fonctionnaires à l'expiration de la période d'application.

Application

(2) Subsection (1) applies only in respect of terms and conditions of employment that are established or modified as permitted by section 254 in respect of the employees in the bargaining unit.

(2) Les conditions d'emploi visées au paragraphe (1) sont celles qui sont établies et, le cas échéant, modifiées en vertu de l'article 254 à l'égard des fonctionnaires faisant partie de l'unité de négociation.

Application

### *Short-term Disability Program*

#### *Programme d'invalidité de courte durée*

Establishment

**260.** (1) Despite the *Public Service Labour Relations Act*, the Treasury Board may, in the exercise of its powers under section 7.1 of the *Financial Administration Act*, establish a short-term disability program for employees in the bargaining units specified by order made by the Treasury Board, and for any other persons or classes of persons that the Treasury Board may designate, and take any measure necessary for that purpose. It may also, during the period that begins on the day on which the program is established and that ends on the expiry of the application period, and after taking into account the recommendations of the committee established under section 265, modify the program.

**260.** (1) Malgré la *Loi sur les relations de travail dans la fonction publique*, le Conseil du Trésor peut, dans l'exercice des attributions que lui confère l'article 7.1 de la *Loi sur la gestion des finances publiques*, établir un programme d'invalidité de courte durée pour les fonctionnaires faisant partie des unités de négociation précisées par décret du Conseil du Trésor ainsi que pour les autres personnes qu'il désigne, individuellement ou au titre de leur appartenance à telle catégorie de personnes, et prendre toute mesure nécessaire à cette fin; il peut en outre, au cours de la période débutant à la date de l'établissement du programme et se terminant à l'expiration de la période d'application, modifier ce programme après avoir tenu compte des recommandations faites par le comité constitué au titre de l'article 265.

Établissement

Time specification can be made

(2) The Treasury Board may specify a bargaining unit for the purposes of subsection (1) at the time it establishes the short-term disability program or at any time afterwards, and section 7.1 of the *Financial Administration Act* includes that power until the program is abolished or replaced.

(2) Le Conseil du Trésor peut préciser les unités de négociation pour l'application du paragraphe (1) au moment de l'établissement du programme et à tout moment par la suite, et l'article 7.1 de la *Loi sur la gestion des finances publiques* comprend ce pouvoir jusqu'à ce que le programme soit aboli ou remplacé.

Moment de l'exercice du pouvoir de préciser

Deeming

(3) Every bargaining unit of employees that has not been specified by the Treasury Board for the purposes of subsection (1) before the effective date is deemed to have been specified by order of the Treasury Board made immediately before the effective date.

(3) Toute unité de négociation comprenant des fonctionnaires qui n'a pas été

Unités réputées précisées

précisée par le Conseil du Trésor, pour l'application du paragraphe (1), avant la date de mise en oeuvre est réputée précisée par décret du Conseil du Trésor immédiatement avant cette date.

## Mandatory contents

**261. (1)** The short-term disability program must provide for the following:

- (a) the rate or rates of benefits and the period during which the rate, or each rate, as the case may be, applies;
- (b) the maximum period for which benefits may be paid; and
- (c) provisions respecting the case management services that are to be provided.

**261. (1)** Le programme d'invalidité de courte durée prévoit ce qui suit :

Contenu obligatoire

- a) le taux ou les taux de prestations et la période à laquelle ils s'appliquent;
- b) la période maximale à l'égard de laquelle des prestations peuvent être versées;
- c) des dispositions relatives aux services de gestion de cas à fournir.

## Optional contents

(2) The short-term disability program may provide for a period during which benefits under it are not to be paid and any other matter that the Treasury Board considers appropriate.

(2) Le programme d'invalidité de courte durée peut prévoir une période d'inadmissibilité aux prestations prévues par le programme et pourvoir à toute autre question que le Conseil du Trésor estime indiquée.

Contenu facultatif

## Application of program

**262. (1)** The short-term disability program applies to the employees referred to in subsection 260(1), and to the other persons referred to in that subsection, during the application period despite

- (a) any provision to the contrary of any collective agreement or arbitral award that is binding on those employees and that is in force on the effective date; and
- (b) any terms and conditions of employment of those employees that are continued in force by section 107 of the *Public Service Labour Relations Act* and that are in force on the effective date.

**262. (1)** Le programme d'invalidité de courte durée s'applique, au cours de la période d'application, aux fonctionnaires visés au paragraphe 260(1) ainsi qu'aux autres personnes visées à ce paragraphe malgré :

Application du programme

- a) toute disposition contraire de toute convention collective ou décision arbitrale liant ces fonctionnaires qui est en vigueur à la date de mise en oeuvre;
- b) les conditions d'emploi de ces fonctionnaires qui sont maintenues en vigueur par l'effet de l'article 107 de la *Loi sur les relations de travail dans la fonction publique* et qui sont en vigueur à la date de mise en oeuvre.

## Provisions are of no effect

(2) Every provision of any collective agreement that is entered into — and of any arbitral award that is made — on or after the effective date that is binding on employees referred to in subsection 260(1) and that is inconsistent with the program is of no effect during the application period.

(2) Les dispositions de toute convention collective conclue ou décision arbitrale liant les fonctionnaires visés au paragraphe 260(1) rendue à la date de mise en oeuvre ou après celle-ci qui sont incompatibles avec le programme sont inopérantes au cours de la période d'application.

Dispositions inopérantes

## Program continues

(3) The short-term disability program continues to apply to employees referred to

in subsection 260(1), and to the other persons referred to in that subsection, after the expiry of the application period and until the program is abolished or replaced.

Continuation du programme

(3) Le programme d'invalidité de courte durée continue de s'appliquer aux fonctionnaires visés au paragraphe 260(1) ainsi qu'aux autres personnes visées à ce paragraphe après l'expiration de la période d'application, jusqu'à son abolition ou son remplacement.

No retroactive application

**263.** No modification to the short-term disability program that is made by the Treasury Board in the exercise of its powers under section 7.1 of the *Financial Administration Act* after the expiry of the application period may, in relation to any period during the application period, retroactively affect the program.

**263.** Aucune modification apportée au programme d'invalidité de courte durée par le Conseil du Trésor après l'expiration de la période d'application dans l'exercice des attributions que lui confère l'article 7.1 de la *Loi sur la gestion des finances publiques* ne peut, à l'égard de toute période comprise dans la période d'application, avoir d'effet rétroactif sur le programme.

Aucun effet rétroactif

Non-application

**264.** Subsection 7.1(2) of the *Financial Administration Act* does not apply in respect of the short-term disability program.

**264.** Le paragraphe 7.1(2) de la *Loi sur la gestion des finances publiques* ne s'applique pas à l'égard du programme d'invalidité de courte durée.

Non-application

Committee

**265.** (1) The Treasury Board must, on the effective date, establish a committee consisting of representatives of the employer and representatives of the bargaining agents for employees.

**265.** (1) Le Conseil du Trésor constitue, à la date de mise en oeuvre, un comité formé de représentants de l'employeur et des agents négociateurs représentant les fonctionnaires.

Comité

Purpose

(2) The purpose of the committee is to make joint recommendations regarding modifications to the short-term disability program, including modifications to

- (a) membership in the program;
- (b) the matters referred to in section 261;
- (c) the conditions for continuing to receive benefits under the program; and
- (d) the reasons for which benefits under the program may be denied.

(2) Le comité a pour mission de formuler des recommandations conjointes concernant la modification du programme d'invalidité de courte durée, notamment en ce qui touche :

Mission

- a) l'adhésion au programme;
- b) les questions visées à l'article 261;
- c) les conditions du maintien de l'admissibilité aux prestations prévues par le programme;
- d) les raisons pour lesquelles le versement de prestations peut être refusé.

Order — effective date

**266.** The Treasury Board may, by order made on the recommendation of the President of the Treasury Board, specify the date on which the short-term disability program becomes effective.

**266.** Le Conseil du Trésor peut, par décret pris sur la recommandation du

Décret : date de mise en oeuvre

président du Conseil du Trésor, fixer la date de mise en oeuvre du programme d'invalidité de courte durée.

### *Long-term Disability Programs*

#### *Programmes d'invalidité de longue durée*

Modifications

**267.** Despite the *Public Service Labour Relations Act*, the Treasury Board may, during the period that begins on the day on which the short-term disability program is established and that ends on the expiry of the application period, in the exercise of its powers under section 7.1 of the *Financial Administration Act*, modify any long-term disability program in respect of the period during which an employee is not entitled to be paid benefits under the program.

Modifications

**267.** Malgré la *Loi sur les relations de travail dans la fonction publique*, le Conseil du Trésor peut, dans l'exercice des attributions que lui confère l'article 7.1 de la *Loi sur la gestion des finances publiques* et au cours de la période débutant à la date de l'établissement du programme d'invalidité de courte durée et se terminant à l'expiration de la période d'application, modifier tout programme d'invalidité de longue durée en ce qui touche la période d'inadmissibilité des fonctionnaires aux prestations prévues par ce programme.

Application of modifications

**268.** (1) The modifications made as permitted by section 267 apply to employees during the application period despite

(a) every provision to the contrary of any collective agreement or arbitral award that is binding on the employees and that is in force on the effective date; and

(b) any terms and conditions of employment of the employees that are continued in force by section 107 of the *Public Service Labour Relations Act* and that are in force on the effective date.

Application des modifications

**268.** (1) Les modifications faites en vertu de l'article 267 s'appliquent aux fonctionnaires au cours de la période d'application, malgré :

a) toute disposition contraire de toute convention collective ou décision arbitrale liant les fonctionnaires qui est en vigueur à la date de mise en oeuvre;

b) les conditions d'emploi des fonctionnaires qui sont maintenues en vigueur par l'effet de l'article 107 de la *Loi sur les relations de travail dans la fonction publique* et qui sont en vigueur à la date de mise en oeuvre.

Provisions are of no effect

(2) Every provision of any collective agreement that is entered into — and of any arbitral award that is made — on or after the effective date that is inconsistent with any modifications that are made as permitted by section 267 is of no effect during the application period.

Dispositions inopérantes

(2) Les dispositions de toute convention collective conclue ou décision arbitrale rendue à la date de mise en oeuvre ou après celle-ci qui sont incompatibles avec toute modification faite en vertu de l'article 267 sont inopérantes au cours de la période d'application.

Provisions continue

(3) Every provision of any long-term disability program that is modified as permitted by section 267 continues to apply to employees after the expiry of the application period until the provision is struck out or replaced.

Continuation des dispositions modifiées

(3) Les dispositions du programme d'invalidité de longue durée qui sont modifiées en vertu de l'article 267 continuent de s'appliquer aux fonctionnaires après l'expiration de la période d'application jusqu'à leur suppression ou leur

remplacement.

No retroactive application

**269.** No modification to a long-term disability program that is made by the Treasury Board in the exercise of its powers under section 7.1 of the *Financial Administration Act* after the expiry of the application period may, in relation to any period during the application period, retroactively affect the provisions of that program that are modified as permitted by section 267.

**269.** Aucune modification apportée à un programme d'invalidité de longue durée par le Conseil du Trésor après l'expiration de la période d'application dans l'exercice des attributions que lui confère l'article 7.1 de la *Loi sur la gestion des finances publiques* ne peut, à l'égard de toute période comprise dans la période d'application, avoir d'effet rétroactif sur les dispositions de ce programme qui sont modifiées en vertu de l'article 267.

Aucun effet rétroactif

## General

### Dispositions générales

Right to bargain collectively

**270.** Subject to the other provisions of this Division, the right to bargain collectively under the *Public Service Labour Relations Act* is continued.

**270.** Sous réserve des autres dispositions de la présente section, le droit de négocier collectivement sous le régime de la *Loi sur les relations de travail dans la fonction publique* est maintenu.

Droit de négocier collectivement

Right to strike

**271.** Nothing in this Division affects the right to strike under the *Public Service Labour Relations Act*.

**271.** La présente section ne porte pas atteinte au droit de grève qui s'exerce sous le régime de la *Loi sur les relations de travail dans la fonction publique*.

Droit de grève

Amendments permitted

**272.** Nothing in this Division precludes the bargaining agents for employees who are bound by a collective agreement or arbitral award and the employer of those employees from amending, by agreement in writing, or from making a joint application to amend, any provision of the collective agreement or arbitral award, as the case may be, so long as the amendment is not contrary to this Division.

**272.** La présente section n'a pas pour effet d'empêcher les agents négociateurs représentant les fonctionnaires liés par une convention collective ou une décision arbitrale et l'employeur de ces derniers de modifier, par accord écrit — ou de présenter une demande conjointe en vue de modifier, selon cas — les dispositions de la convention ou de la décision, selon le cas, dans la mesure où la modification n'est pas incompatible avec la présente section.

Modifications autorisées

Exemption from *Statutory Instruments Act*

**273.** The *Statutory Instruments Act* does not apply to orders made under sections 254, 260 and 266. However, each of those orders must be published in the *Canada Gazette*.

**273.** La *Loi sur les textes réglementaires* ne s'applique pas aux décrets pris au titre des articles 254, 260 et 266. Toutefois, chacun de ces décrets doit être publié dans la *Gazette du Canada*.

Non-application de la *Loi sur les textes réglementaires*