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FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Speech by:

The Honourable Diane Bellemare

Wednesday, September 19, 2018

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Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate) moved second reading of Bill C-62, An Act to amend the Federal Public Sector Labour Relations Act and other Acts.

She said: Honourable senators, today I have the privilege of introducing Bill C-62 at second reading. This bill, entitled An Act to amend the Federal Public Sector Labour Relations Act and other Acts, can be highly technical, but it is not necessary to enter into all the details for the moment. This is what I think. In any case, senators, many of my honourable colleagues must have seen the cartoon published by *The Globe and Mail* last September 7. Do you remember? It showed a bear wandering in downtown Ottawa that was tranquilized by reading Senate debates.

This is why, Your Honour, I would ask your permission to call to mind the bear that wandered into downtown Ottawa earlier this month so that it can be tranquilized once again, this time with my speech on Bill C-62. Hopefully not.

[*Translation*]

But to be serious, honourable colleagues, this bill, which is entitled An Act to amend the Federal Public Sector Labour Relations Act and other Acts, will basically restore specific labour relations procedures for federal public service employees to the way they used to be before the passage of certain provisions that were inserted into three budget implementation bills, namely the Economic Action Plan 2013 Act, No. 2, the Economic Action Plan 2014 Act, No. 1, and the Economic Action Plan 2015 Act, No. 1.

[*English*]

The goal of the bill before us today is to re-establish balance in labour relations for public service employees and return them to the state they were in before the adoption of certain legislative provisions contained in three budget implementation bills from 2013, 2014 and 2015.

[*Translation*]

The legislation before us today combines two bills that were introduced by the current government during the Forty-second Parliament, Bill C-5 and Bill C-34, which were introduced on February 5, 2016, and November 28, 2016, respectively. Bill C-5 had to do with public service sick leave and Bill C-34 dealt with collective bargaining and essential services.

Bill C-62 basically combines the proposals from both bills and consolidates the two bills into one so that these measures can make their way through the parliamentary process as efficiently as possible. Bill C-5 and Bill C-34 target the same clientele and reflect the same principle of restoring balance in public service labour relations by amending or repealing statutory provisions set out in budget implementation acts. Essentially, they apply to the public service.

When the current government took office in 2015, it promised to reinstate legislation on working conditions and labour relations in the public service that respect the collective bargaining process, recognize the important role unions play in protecting workers' rights, and promote the growth of the middle class.

[*English*]

Let me be clear that this bill affects only the public service; in other words, the changes in Bill C-62 will affect only public servants and will not have a direct impact on the private sector.

[*Translation*]

Now let's look at what this bill does. I'll come back to the details later.

First, it amends the Federal Public Sector Labour Relations Act to restore the procedures for the choice of process of dispute resolution including those involving essential services, arbitration, conciliation and alternative dispute resolution that existed before December 13, 2013.

Second, it amends the Public Sector Equitable Compensation Act to restore the procedures applicable to arbitration and conciliation that existed before December 13, 2013.

Third, it repeals provisions of the Economic Action Plan 2013 Act, No. 2 and the Economic Action Plan 2014 Act, No. 1 that are not in force. Those provisions concern the Federal Public Sector Labour Relations Act, the Canadian Human Rights Act and the Public Service Employment Act.

Lastly, it repeals Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1, which authorizes the Treasury Board to establish and modify, despite the Federal Public Sector Labour Relations Act, terms and conditions of employment related to the sick leave of employees who are employed in the core public administration.

Let me begin with changes to the public service sick leave regime, which were passed as part of the 2015 omnibus bill, the Budget Implementation Act.

Division 20 of the Economic Action Plan 2015 Act, No. 1, which was known as Bill C-59, gave Treasury Board the following powers: to establish and modify terms and conditions of employment related to the sick leave of employees; to establish a short-term disability program for employees without going through the collective bargaining process; to modify certain provisions of long-term disability programs in the core public administration; and to take away accumulated sick leave.

These changes were enacted despite the historic 1967 legislation that gave public servants the right to unionize and negotiate collective agreements.

In a nutshell, the amendments that received Royal Assent in June 2015 took away the unions' ability to negotiate sick leave and gave the government the power to unilaterally impose any regime it saw fit. Bargaining agents for most public service unions strongly opposed these amendments, which were drafted without consultation. In June 2015, 12 of the 15 unions representing federal public servants filed a joint lawsuit to challenge these provisions, arguing that they were unconstitutional.

Bill C-62 aims to remove unilateral powers from the government when it comes to sick leave and to demonstrate respect for the collective bargaining process by sending these issues back to the negotiating table.

The current government believes that unions have an important role to play not only in protecting workers' rights, but also in strengthening the middle class by negotiating working conditions and compensation. That is why it committed to not using its unilateral powers to amend sick leave and repealing the legislative provisions that gave it those powers.

Let's move on to the Federal Public Sector Labour Relations Act. With Bill C-62, the government also wants to repeal the amendments made to the public service labour relations regime under another act. Bill C-62 would repeal the most controversial amendments made to the Federal Public Sector Labour Relations Act in 2013.

I am referring to amendments that allowed the employer to unilaterally designate what services are essential, take away the right of bargaining agents to choose the method of dispute resolution, and impose specific elements, namely recruitment needs and Canada's fiscal circumstances, that arbitrators had to take into account before making a recommendation or award.

[*English*]

With Bill C-62, the employer will no longer be able to unilaterally designate what services are essential, choose the method of dispute resolution or impose specific elements that arbitrators should take into account before making a recommendation or decision.

[*Translation*]

Let's not forget that a number of unions filed Charter challenges against the provisions that were adopted in 2013. There is reason to believe that these challenges would have been upheld by the courts. In 2008, the Government of Saskatchewan made similar changes to those that were in the 2013 bill. These changes were successfully challenged in the Supreme Court by the Saskatchewan Federation of Labour.

I would now like to turn to the major changes proposed in Bill C-62 concerning essential services, collective bargaining, and dispute settlement.

First, the notice to bargain will be changed back to four months' notice; the parties may, however, meet beforehand to enter into negotiations.

Second, dispute resolution will be restored to the way it was before the changes were made in 2013. Should negotiations come to a standstill, the bargaining agents will be able to choose the method of dispute resolution, meaning either the conciliation/strike route or arbitration. The changes made in 2013 took away the arbitration option from the unions.

Third, with respect to the preponderant factors that arbitrators had to take into account when making awards or recommendations, public interest commissions and arbitration boards would no longer be required to give undue weight to certain factors. Under the current system adopted in 2013, they must give greater weight to two factors: recruitment and retention, and Canada's fiscal circumstances. With the bill being debated today, these would only be two of the factors that a third-party decision maker would have to take into account. It would be up to the decision maker to determine how much weight to give to each factor.

However, the employer would still have the right to present arguments about the state of the Canadian economy and the need to recruit and retain competent individuals for the public service in order to meet the needs of Canadians. These are some of the criteria that can be debated before a public interest commission or an arbitration board, and the members of these commissions and boards have the flexibility to decide how much weight should be given to these factors.

Fourth, with respect to essential services, the employer would no longer have unilateral powers to decide which services are essential to public health and safety and to designate positions as being necessary to provide these services. Under the current system, the employer has the exclusive right to designate essential services.

Bill C-62 would change that and restore the previous system, which allowed bargaining agents to represent the interests of employees through negotiations.

[*English*]

As was the case before the legislative changes introduced in 2013 with Bill C-62, the employer will work with negotiators to designate which positions are necessary to provide essential services and will reach agreements about essential services with them.

[*Translation*]

These agreements would identify the types and number of positions in the bargaining unit that are necessary for the employer to provide essential services. Under the system that Bill C-62 would restore, the Treasury Board Secretariat, as the employer of the core public administration, would be responsible for providing advice and guidelines to representatives of the organizations; reviewing, at an organization's request, any positions in dispute; negotiating essential services agreements at the national level; asking the Public Service Labour Relations Board to intervene in unresolved cases and provide representation; and maintaining a central database of positions identified as essential so that employers are able to maintain essential services.

Lastly, Bill C-62 seeks to repeal the amendments made to the recourse procedures, even though these amendments never came into force because they were meant to be implemented at a later date.

That is Bill C-62 in short.

Dear colleagues, I am leading off the debate today to pass Bill C-62 at second reading. I want to remind our new colleagues that, at this stage, debate generally focuses on the principles and merits of the bill. It focuses on the general thrust of the bill. We are looking to answer the following questions. Is this bill a good bill? What are the underlying principles of the bill? Why did the government introduce this bill?

Second reading is not the time to get into the nitty gritty of the bill, nor is it the time to propose technical amendments. It is the time when we try to understand the issues related to the bill, adopt it in principle and refer it to a committee for a more detailed study.

[*English*]

So we must ask ourselves, is this bill sound in principle?

Its goal is to re-establish good-faith negotiations between the public service and the government as employer.

The government is determined to re-establish a culture of respect for federal public servants within the public service and respect the collective bargaining process.

Let me repeat: Bill C-62 is about restoring — there's no change — the system of collective bargaining and the role of the employer that existed before 2013. That has been the case since 1967.

[*Translation*]

In the context of the recent negotiations with the public service unions, the government already reaffirmed its strong commitment to negotiating in good faith. When the government came to power in 2015, all the public service collective bargaining agreements had expired. The government made it clear that it intended to work collaboratively with public servants and negotiate in good faith. After two years of respectful negotiations, the government has been able to sign agreements with more than 99 per cent of unionized public servants employed by the Treasury Board.

I want to mention that several of these agreements include a framework for developing an integrated approach to employee wellness management. This new approach is going to become more of a reality in the future. It's designed to enhance employee wellness, which in turn will improve service delivery to the public. Employees who are in good physical and mental health are better equipped to meet Canadians' expectations and avoid mistakes.

[*English*]

Bill C-62 takes us closer to the culture that the government wants to undertake with its employees. This cultural shift is, without a doubt, the result of better collaboration in terms of labour relations.

Bill C-62 is also based on an approach based on the principle of fundamental fairness, insofar as it corresponds to the re-establishment of specific labour relations conditions, inseparable from the right of association enshrined in the Constitution.

[*Translation*]

In conclusion, I strongly support this bill, because it restores the public service labour relations regime that existed before these amendments were adopted. The system worked well and could serve as a model for the private sector. The changes made in the Forty-first Parliament changed the rules in favour of the employer at the expense of employees and their bargaining agents, which upset the balance that had been in place for years.

[*English*]

Bill C-62 will allow us to re-establish labour relations between employer and employees based on the concept of fairness, where the employer and unions both contribute in important ways to ensure that the workers are treated fairly, that they work in healthy and secure workplaces, that they earn a decent living and, in particular, that they deliver quality services to all Canadians.

Indeed, the public service deserves respect for the important services they provide to Canadians. I can't list them all, but we know everything the functions do.

[*Translation*]

For all these reasons, I urge you to ensure swift passage of Bill C-62 at second reading and to send it to committee as soon as possible.

Thank you for your attention.