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FEDERAL PUBLIC SECTOR LABOUR RELATIONS ACT

**BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED**

Speech by:

The Honourable Diane Bellemare

Wednesday, November 21, 2018

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

She said: Today I rise to speak on Bill C-62, An Act to amend the Federal Public Sector Labour Relations Act and other Acts now in this chamber for third reading.

[Translation]

As I said in this chamber at second reading, this bill seeks to 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 introduced in the 41st Parliament.

[English]

Honourable colleagues may remember that following the introduction of this legislation by the previous government, 12 of the 15 federal unions representing public servants took the government to court on the grounds that provisions, especially those that unilaterally cancelled the bank of sick days for public servants, were unconstitutional.

[Translation]

Bill C-62 essentially seeks to repeal a number of bills that were never implemented by the current government. It is an act of good faith by the government to re-establish balance in labour relations for public service employees. If Bill C-62 is passed, the employer will no longer have the power to unilaterally designate what services are essential, take away the right of bargaining agents to choose the method of dispute resolution, unilaterally change the sick leave regime, or impose new elements that arbitrators must take into account before making a recommendation or award. I want to reiterate that this bill affects only public service employees. It does not have any impact on private sector employees.

I would now like to talk about the work that was done in committee and the issues that were raised.

I thank the Standing Senate Committee on National Finance for its excellent work. It held four meetings to study this bill and benefited from the expertise of 15 witnesses, including the President of the Treasury Board, the Honourable Scott Brison, and his officials, representatives from the Office of the Parliamentary Budget Officer, public service union representatives, departmental human resources representatives, and individuals with extensive experience in labour relations, namely a lawyer and several academics. The committee's work centred on three main issues: the use of accumulated sick leave by public service employees, the process for negotiating and designating essential services, and dispute resolution.

Before getting into the details of these issues, I want to quickly acknowledge a fourth issue regarding gender-based analysis. Our colleague, Senator Tannas, asked whether the bill had undergone a gender-based analysis. The President of the Treasury Board, the Honourable Scott Brison, confirmed that it had. Like all government bills, Bill C-62 was analyzed to ensure that it is fair for women and men.

Allow me to move on to the three issues raised in committee. I will begin with accumulated sick leave.

The witnesses helped us dispel the myth that public service sick leave is a cashable benefit that employees can accumulate and use as a form of paid vacation. According to this myth, it is common practice for public service employees to bank 200 to 300 days of sick leave to take a vacation before retiring. Witnesses were very clear: Sick leave can only be used by people who are sick.

[English]

Let me say it again. Witnesses were very clear: Sick days can only be used by people who are sick.

Nick Fabiano, Acting Assistant Commissioner, Human Resources Management with Correctional Service Canada, described the national attendance monitoring program that analyzes absences among different groups in his department.

If absences for some individuals are much higher than the average for a certain group, the manager will address this issue with the employee. Management tracks patterns over the course of an employee's career — for example, if someone takes sick leave often on Fridays or Mondays.

[Translation]

Furthermore, managers and supervisors are responsible for asking for a medical certificate if an employee is absent for more than a few days.

[English]

Amy Kishek of the Public Service Alliance of Canada explained:

The accumulated sick leave is not monetized. It can't be withdrawn without proof of illness, without a provable need to rely on that sick leave.

When it comes to people using sick leave at the end of their careers, Ms. Kishek said:

That's easily attributable to people who, at the end of their career, are becoming increasingly sick. They need to exhaust their bank in order to depend on long-term disability, which is not easy to qualify for. It's adequate and necessary.

Deborah Cooper, general counsel of the Canadian Association of Professional Employees, said:

Most people, when they retire . . . have 200 days, 150 days. This is indicative of a dedicated public service who rarely uses their sick leave.

When you retire with 250 or 300 sick days, you get nothing for that. It is an insurance plan that, if you are lucky, you never had to use. Those 250 days go off into the ether, and you hopefully go happily into retirement. It is not something that you get any kind of pay for, or anything else . . .

[Translation]

As these witnesses explained, it is true that a certain number of employees retire after using all their sick leave, but these are people who are ill, people who have cancer or heart problems or have had a stroke, for example.

Marc Thibodeau, director general of labour relations and compensation for the Canada Border Services Agency, summed it up very well:

What may be perceived as using sick leave as a form of early retirement is actually a scenario in which people really become ill to the point that they cannot return to work. So they retire.

It goes without saying that people nearing the end of their career are older. I need not remind you, honourable senators, that age brings wisdom, but it also brings health issues. That is a demographic fact.

Let us now discuss essential services.

[English]

The second issue that stimulated much discussion in committee was about the best way to determine which functions of public service should be considered essential services.

[Translation]

Under Bill C-62, employers will no longer have the exclusive right to determine what is considered an essential service necessary to the safety and security of the public or to designate the positions necessary to provide these services. Employers will work with bargaining agents to determine which positions are necessary to provide essential services and will sign essential services agreements with them, as was the case before the passage of the bills inserted into the budget implementation bills.

[English]

Witnesses were unanimous: The process for determining essential services is best achieved with the involvement of those who will provide them. In other words, employees or the unions who represent them.

[Translation]

In short, it is more efficient to determine which services are essential and who will provide these services by consensus than by having the employer make a unilateral decision. Furthermore, bargaining provides the flexibility to review essential services agreements as the situation evolves.

The third issue, which was discussed many times in committee, has to do with the use of either arbitration or the conciliation/strike route for dispute resolution. If Bill C-62 is passed, it will be possible to choose between conciliation/strike and arbitration. Dispute resolution will no longer be predetermined through the imposition of provisions set out in the act.

[English]

Witnesses confirmed that dispute resolution is more likely to be successful when the method is one of negotiation rather than imposed arbitration.

In the words of Professor Emeritus Robert Paul Hebdon from McGill University:

A freely negotiated settlement between the parties is far superior to an imposed settlement, either by legislation or by an arbitrator When it's freely negotiated, labour and management feel like they own the settlement and support it. If they are a union, they have probably voted on it. They are generally more likely to live with the terms of it if they've got their stamp on it.

[Translation]

Some of my honourable colleagues asked the witnesses whether they would insist on an amendment proposed in the other place regarding essential services and the availability of other individuals to provide these services during a strike. The stakeholders are satisfied with the bill as is. This doesn't mean the bill is perfect, but the stakeholders agree that the most important thing is to put things back the way they were, while acknowledging that improvements to the legislation could be negotiated in the future, without amending this bill.

[English]

In general terms, Deborah Cooper, the general counsel of the Canadian Association of Professional Employees, or CAPE, said that Bill C-62:

. . . undoes virtually all the difficulties created by Bill C-4 and Bill C-59. CAPE looks forward to returning to a labour relations system which is not perfect but much more balanced and fair. As such, CAPE urges you to ensure there are no further delays in providing this balanced voice.

Debi Daviau, President, Professional Institute of the Public Service of Canada, urged senators to pass the bill because:

For the moment, the simplest thing to do is set it back to an environment that we worked with for the better part of the last 60 years so that we can just get down to the business of negotiating collective agreements and go back to serving Canadians, which is what we do best.

[*Translation*]

In closing, honourable senators, I don't want to leave you with the impression that the bill guarantees perfection in labour relations within the public service or that it fixes everything.

We heard that the sick leave system needs to be updated to bring it into the 21st century. The current system puts younger employees at a disadvantage, because, in the event of an injury or

a serious illness, there is a good chance they will not have accumulated enough sick leave to heal or recover properly. Accordingly, the President of the Treasury Board promised that his department would work closely with unions to create a wellness regime that will address problems like mental health issues and other potentially chronic illnesses. The committee was assured that that work is under way.

I therefore urge you to pass this legislation quickly. Thank you for your attention.
