



THE CANADIAN  
BAR ASSOCIATION  
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BARREAU CANADIEN

November 18, 2013

Via email: [nffn@sen.parl.gc.ca](mailto:nffn@sen.parl.gc.ca); [soci@sen.parl.gc.ca](mailto:soci@sen.parl.gc.ca); [FINA@parl.gc.ca](mailto:FINA@parl.gc.ca); [HUMA@parl.gc.ca](mailto:HUMA@parl.gc.ca)

The Honourable Senator Joseph A. Day  
Chair, National Finance Committee  
Senate of Canada  
Ottawa, ON K1A 0A4

The Honourable Senator Kelvin K. Ogilvie  
Chair, Social Affairs, Science and  
Technology Committee  
Senate of Canada  
Ottawa, ON K1A 0A4

Mr. James Rajotte, M.P.  
Chair, Finance Committee  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6

Mr. Phil McColeman, M.P.  
Chair, Human Resources, Skills and  
Social Development Committee  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6

Dear Sirs:

**Re: Bill C-4, Economic Action Plan 2013 Act No. 2  
Part 3, Division 5, Canada Labour Code amendments  
Part 3, Divisions 17 and 18, Public Service Labour Relations Act**

I write on behalf of the National Labour and Employment Law Section of the Canadian Bar Association (the CBA Section) to express profound concerns about the process for legislative amendments in Bill C-4 dealing with labour and employment law.

The CBA is a national association representing over 37,500 jurists, including lawyers, Québec notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice. The CBA Section focuses on the law and practice of labour-management relations, trade unions, employees and employment standards. Its members comprise advocates for employers as well as unions and employees. It speaks as a united voice on issues of common concern on substantive law and legislative process.

The CBA has steadfastly objected to omnibus legislation like Bill C-4. Enacting important changes in diverse and unrelated subject areas in a single bill precludes meaningful comment and debate.

While others in the CBA will comment on some other parts of Bill C-4, this CBA Section is particularly concerned about the process for amendments to the *Canada Labour Code* (Part 3, Division 5) and the *Public Service Labour Relations Act* (Part 3, Divisions 17 and 18). Part 3, Division 5 would change the definition of "danger" that justifies work refusals in all federally

regulated workplaces. Part 3, Divisions 17 and 18 would introduce a unilateral employer right to determine essential services in the federal public service.

These and other significant amendments were conceived and drafted without consultation with either labour or management groups, contrary to custom. Consultation ensures that legislation is mindful of and responsive to its potential impact on workers and employers in affected workplaces. Examples of extensive consultation leading to federal labour and employment legislation amendments include Harry Arthurs' review of labour standards (2004-2006) and Andrew Sims' review of industrial relations (1996).

Advance consultation on proposed changes to labour legislation and tribunals also minimizes the vulnerability of changes to challenge under sections 2(b) and (d) of the *Canadian Charter of Rights and Freedoms*. Charter challenges are increasingly commonplace in the labour context.

All parties are now disadvantaged as they hastily review unexpected and unexplained changes in Bill C-4. The concern is compounded when those changes arrive in omnibus legislation, as the opportunity for serious reflection and debate is minimal.

The CBA Section believes that eschewing consultation and employing omnibus bills diminish the quality of our laws and the democratic process. We urge you to reconsider these practices. In the short term, referring Part 3, Division 5 to the Senate Social Affairs, Science and Technology Committee and to the House of Commons Human Resources, Skills and Social Development Committee will ensure some appropriate review. We urge you to likewise refer Part 3, Divisions 17 and 18 to a committee with appropriate subject-matter expertise.

Our members look forward to your response.

Sincerely,

*(original signed by Tamra L. Thomson for Delayne M. Sartison)*

Delayne M. Sartison, Q.C.  
Chair, National Labour & Employment Law Section