



Legislative Summary

BILL C-3: AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADA LABOUR CODE

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For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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Legislative Summary of Bill C-3
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-3: AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADA LABOUR CODE

1 BACKGROUND

Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code was introduced in the House of Commons and read for the first time on 26 November 2021.¹ On 6 December 2021, a Charter statement was tabled for the bill in the House of Commons.² The bill was read a second time and referred to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) on 9 December 2021. HUMA reported the bill with amendments to the House of Commons on 15 December 2021.³ The third reading took place on 16 December 2021, with additional amendments.

In the meantime, the Standing Senate Committee on Social Affairs, Science and Technology (SOCI) began a pre-study of the bill. SOCI issued a report on 15 December 2021, as well.⁴ The Standing Senate Committee on Legal and Constitutional Affairs also held a meeting concerning the amendments to the *Criminal Code* contained in Bill C-3. It tabled a report in the Senate on 16 December 2021⁵ and the bill received first reading in the Senate that day. The second and third readings were completed on 17 December 2021 and the bill received Royal Assent the same day.

Bill C-3 amends two laws and contains eight clauses: five that pertain to the *Criminal Code*, two that pertain to the *Canada Labour Code* (CLC) and one that covers the timeline of the bill's coming into force. Key clauses are discussed in the following sections.

1.1 AMENDMENTS TO THE *CRIMINAL CODE*

The bill creates two new criminal offences and recognizes two new aggravating factors in sentencing.⁶ The Honourable David Lametti, Minister of Justice and Attorney General of Canada, explained the reason for the changes as follows:

No one should be intimidated for providing or seeking health care and everyone should be able to access the care they need without undue obstruction. This type of behaviour is completely unacceptable, particularly during a global pandemic where access to health care services is essential for Canadian society to recover and thrive. Today, we are delivering on an important commitment we made to Canadians.⁷

1.1.1 Existing *Criminal Code* Offences

A variety of existing criminal offences may apply in situations involving the intimidation of a health care worker or a protest near health care facilities where individuals are being obstructed or intimidated, depending on the facts of the case.⁸

These include the following provisions of the *Criminal Code*:

- section 175 (causing disturbance, indecent exhibition, loitering, etc.);
- section 264 (criminal harassment);
- section 264.1 (uttering threats);
- section 423 (intimidation); and
- section 430 (mischief).

While most criminal offences relate to specific actions regardless of who the victim is, the *Criminal Code* also includes some offences that relate to specific categories of victims, as in the new offences being proposed. These include, for example:

- section 51 (intimidating Parliament or legislature);
- section 176 (obstructing or violence to or arrest of officiating clergyman); and
- section 423.1 (intimidation of a justice system participant or journalist).

1.2 AMENDMENTS TO THE CANADA LABOUR CODE

Bill C-3 also amends the CLC to repeal the provision that makes “treating their [own] illness or injury” a valid reason for an employee to take personal leave; instead, it provides up to 10 days of medical leave of absence with pay in a calendar year.

The Honourable Seamus O’Regan Jr., Minister of Labour, explained the reasoning behind Bill C-3’s proposed changes to the CLC:

Canadians shouldn’t have to choose between staying home when they’re sick and putting food on the table. Paid sick leave will protect workers and their families, protect their jobs, and protect their workplaces. It’s an important step in the fight against COVID-19 and a necessary addition to the social safety net that organized labour has been advocating for.⁹

An amendment in the House of Commons also extends leave where a child dies or an employee or their spouse or common-law partner has a stillbirth.

1.2.1 Legislative Framework Under the *Canada Labour Code*

Under Part III of the CLC, employees of any federal work, undertaking or business, any corporation established to perform any function or duty on behalf of the Government of Canada (other than a department) and any Canadian carrier, as defined in the *Telecommunications Act*,¹⁰ are entitled to various unpaid and paid leaves of absence during which they benefit from job protection.¹¹

Pension, health and disability benefits continue to accumulate during the leave period, provided the employee pays any necessary contributions. The employee's seniority also accumulates during this time.¹² It should be noted that Part III of the CLC does not apply to the federally regulated public sector; the rights and responsibilities of federal public servants and parliamentary employees regarding certain labour standards are subject to collective agreements established in accordance with federal legislation.¹³ Until now, Part III of the CLC had provided for five types of leave of absence related to injury or illness:

- Personal leave (section 206.6 of the CLC) of up to five days per calendar year, of which the first three days are paid by the employer if the employee has completed three consecutive months of continuous employment with the employer, is granted to the employee for various reasons which until now included “treating their [own] illness or injury.”
- Medical leave (section 239 of the CLC) grants up to 17 weeks of unpaid leave to the employee if they cannot work as a result of a personal illness or injury, organ or tissue donation, or medical appointments during working hours. Bill C-3 amends the provisions for this leave to create a medical leave of absence with pay of up to 10 days in a calendar year, in addition to the existing 17 weeks of unpaid leave.
- Work-related illness or injury leave (section 239.1 of the CLC) allows the employee to take leave for an indeterminate period of time due to a work-related illness or injury. Employers must subscribe to a plan that provides “wage replacement, payable at an equivalent rate to that provided for under the applicable workers’ compensation legislation in the employee’s province of permanent residence.”
- Leave of absence for members of the reserve force of the Canadian Armed Forces (sections 247.5 to 247.97 of the CLC) allows members of the reserve force who have been working for an employer for a certain time to take leave for an indeterminate period if they need treatment, recovery or rehabilitation in respect of a physical or mental health problem that results from service, specifically for operations or activities referred to in sections 247.5(1)(a) to 247.5(1)(f) of the CLC.
- Leave related to COVID-19 (section 239.01 of the CLC) was created in March 2020 as a temporary measure which expired on 20 November 2021. This leave allowed the employee to take up to four weeks of unpaid leave if they were

unable to work for reasons related to COVID-19, including if they contracted or thought they had contracted COVID-19, and up to 42 weeks if they were unable to work because they had to care for a child or family member due to reasons related to COVID-19.¹⁴ The government explained that the leave related to COVID-19 “was designed to align with the Canada Recovery Sickness Benefit and the Canada Recovery Caregiving Benefit,” with the qualifying period for the benefits ending on 20 November 2021.¹⁵

Bill C-2, An Act to provide further support in response to COVID-19,¹⁶ which was introduced on 24 November 2021, proposes to extend the qualifying period for these benefits until 7 May 2022 and recreate the leave related to COVID-19. Clause 24(1) of Bill C-2 proposes to increase the maximum period of leave to six weeks for the employee who is unable to work for reasons related to COVID-19, including if they contracted or thought they contracted COVID-19, and up to 44 weeks if they are unable to work because they have to care for a child or family member for reasons related to COVID-19.

Part III of the CLC also provides for bereavement leave. Under Division VIII, employees who experience the death of an immediate family member (including a child of the employee, or a child of the employee’s spouse or common-law partner¹⁷) are entitled to take up to 10 days of job-protected leave in one or two periods, starting on the day of the family member’s death and ending six weeks after the latest day of any funeral, burial or memorial service.¹⁸ For those who have been continuously employed by their employer for over three consecutive months, the first three days of the bereavement leave are paid.¹⁹ The same bereavement leave is available to employees who, at the time of the death of a family member,²⁰ were on compassionate care leave (section 206.3 of the CLC) or leave related to critical illness (section 206.4 of the CLC) with respect to that family member.²¹ In addition to bereavement leave, the CLC provides for up to 104 weeks of leave following the death or disappearance of a child in relation to a probable crime under the *Criminal Code*.²²

The provision of up to 10 days of bereavement leave is the result of a recent private member’s bill, Bill C-220, An Act to amend the Canada Labour Code (bereavement leave), which received Royal Assent on 29 June 2021 and came into force three months later. Before this bill came into force, the CLC provided five days of bereavement leave and did not include employees who were on compassionate care leave or leave related to critical illness with respect to a family member at the time of that family member’s death.²³

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *CRIMINAL CODE* (CLAUSES 1 TO 5)

2.1.1 New Offences (Clause 2)

Clause 2 of Bill C-3 creates two new criminal offences. The first relates to intimidation:

423.2(1) Every person commits an offence who engages in any conduct with the intent to provoke a state of fear in

- (a) a person in order to impede them from obtaining health services from a health professional;
- (b) a health professional in order to impede them in the performance of their duties; or
- (c) a person, whose functions are to assist a health professional in the performance of the health professional's duties, in order to impede that person in the performance of those functions.

Proposed section 423.2(1) is drafted using language similar to that used in section 423.1(1) of the *Criminal Code*, which makes it an offence to intimidate a justice system participant or journalist.²⁴

The second offence relates to intentional obstruction or interference with access to hospitals and other health care facilities:

423.2(2) Every person commits an offence who, without lawful authority, intentionally obstructs or interferes with another person's lawful access to a place at which health services are provided by a health professional.

Some of the language in that provision is similar to that in parts of the existing offence of mischief under section 430 of the *Criminal Code*:

430(1) Every one commits mischief who wilfully

...

- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

As outlined in new section 423.2(3), these are hybrid offences; they may be prosecuted by way of indictment which carries a maximum term of imprisonment of 10 years or by summary conviction which carries a maximum term of imprisonment of up to two years less a day. In comparison, the maximum sentence for intimidating a justice system participant or journalist is 14 years, and for the general offence of intimidation, five years.

New section 423.2(4) provides a defence to obstructing or interfering with access (new section 423.2(2)) where a person is at, near or approaches a place where health services are provided “for the purpose only of obtaining or communicating information.” Similar language is used in the existing *Criminal Code* offences of intimidation (section 423) and mischief (section 430).

2.1.2 Sentencing (Clauses 5 and 8)

Section 718.2 of the *Criminal Code* outlines a number of principles that courts are to consider when imposing a sentence. Section 718.2(a) lists the aggravating circumstances that may increase the sentence for all offences. Clause 5 of Bill C-3 adds two new aggravating circumstances to consider when sentencing:

- evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services; and
- evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services.

Clause 8(1) states that clauses 1 to 5 (*Criminal Code* amendments) come into force on the 30th day after the day this Act receives Royal Assent.

2.2 AMENDMENTS TO THE CANADA LABOUR CODE (CLAUSES 6 AND 7)

2.2.1 Medical Leave of Absence with Pay (Clauses 6 and 7)

Section 206.6(1)(a) of the CLC currently states that “treating their [own] illness or injury” is one reason allowing an employee to take up to five days of personal leave a year, of which three days would be paid by the employer if the employee has completed three consecutive months of continuous employment with the employer. Clause 6 of Bill C-3 repeals this section so that it does not overlap with the provisions for medical leave of absence with pay created by clause 7, which applies, pursuant to section 239(1) of the CLC, when an employee cannot work due to illness or injury, organ or tissue donation, or medical appointments during working hours. The scope of reasons is therefore broader than what was previously applied under existing section 206.6(1)(a).

Clause 7(1) adds provisions that address the new medical leave of absence with pay, outlined in new sections 239(1.2) to 239(1.6) of the CLC.

New section 239(1.2) of the CLC provides that, after each month of continuous employment with an employer, the employee earns one day of medical leave of absence with pay, up to a maximum of 10 days in a calendar year. HUMA amended this provision of the bill so that an employee earns one day of medical leave “after completing thirty days of continuous employment,” rather than “at the beginning of each month,” so that someone who starts a job in the middle of the month begins accumulating medical leave sooner. As originally drafted, a person could not count the days between the day they started working and the first day of the next month, and would have to work more than one month to be entitled to the first day of paid medical leave.²⁵ The House of Commons further amended that section of the bill to provide three days of paid sick leave after 30 days of service, then one additional day at the beginning of each month after that, for a maximum of 10 days per year. The amendment clarifies what happens with existing and new employees at the time the section comes into force and in future years.²⁶

Compared with the personal leave provision currently in effect, which an employee can take to treat their own illness or injury, the new medical leave of absence with pay provides for more days of paid leave per year (10 instead of three), and it ensures that employees keep their three days of paid personal leave to be used for other reasons, as described in section 206.6(1). Also, employees have access to paid leave faster under the new provisions for medical leave of absence with pay, earning access to this leave after one month instead of three.

New section 239(1.3) states that each day of medical leave of absence with pay is to be paid at the employee’s regular rate of wages for their normal hours of work and that the paid leave, for all purposes, is considered to be wages. In clause 7(2) new section 239(13)(a) of the CLC explains that the terms “regular rate of wages” and “normal hours of work” may be defined by regulation.

Under new section 239(1.4), the number of days of medical leave of absence with pay that an employee has earned but not used during a calendar year is to be carried forward to the following year on 1 January. However, this number is deducted from the maximum number of days they can earn in the new year, so that no more than 10 days of medical leave of absence with pay can be taken in a single calendar year. This ensures that employees do not start with zero days of paid leave every year on 1 January.

New section 239(1.5) provides that medical leave of absence with pay may be taken together or spread out, but the employer may require that each period of leave be no less than one full day; consequently, an employee could be required to use a full day of leave to go to a medical appointment, for example, instead of only the number of hours required.

Under new section 239(1.6), and no later than 15 days after the employee has returned to work after taking a medical leave of absence with pay, the employer may require in writing that the employee provide a certificate issued by a health care practitioner attesting to the employee's inability to work during their leave.

Until now, existing section 239(2) of the CLC stipulated that the employer may require a certificate issued by a health care practitioner if the employee was taking a medical leave of absence of three days or longer. New section 239(2) makes small changes to this provision to specify that it applies to a medical leave of absence without pay, since new section 239(1.6) already addresses the case of certificates for leave with pay. Therefore, as originally drafted, an employee may be asked to provide a medical certificate for any paid leave, regardless of the length of their absence, whereas in the case of unpaid leave, the requirement applies only if the leave of absence is of three days or longer. HUMA amended new section 239(1.6) so that a medical certificate can only be requested for paid medical leave of at least five consecutive days. The requirement for a medical certificate after three or more days of unpaid leave remains unchanged.²⁷

Clause 7(2) amends section 239(13) of the CLC, which outlines the areas for which the Governor in Council can make regulations respecting Division XIII of the CLC on medical leave. New section 239(13)(b) states that any provision under Division XIII of the CLC that addresses a medical leave of absence with pay can be modified by regulation for the purposes of applying the division to any class of employees. These regulatory changes may be made only if:

- the application of the provision without the modification would be unreasonable or inequitable in respect of the employees in that class or their employers, due to the work practices of that class, and
- those employees will, despite the modification, earn periods of medical leave of absence with pay at a rate that is substantially equivalent to the rate provided for in section 239(1.2), that is, one day of paid leave for each month of consecutive work, up to a maximum of 10 days of paid leave per calendar year.

Clause 8(2) provides that clauses 6 and 7, which address medical leave of absence with pay as outlined in the CLC, comes into force on a day to be fixed by order.

2.2.2 Bereavement Leave (Clause 6.1)

At third reading, the House of Commons introduced clause 6.1, which essentially integrates Bill C-307, An Act to amend the Canada Labour Code (bereavement leave), with some changes into Bill C-3.²⁸ In addition to the existing bereavement leave provision, a period of eight weeks of leave is granted if a child dies or a person has a stillbirth:²⁹

- Where it is the employee’s child or the child of their spouse or common-law partner who dies, they may take up to eight weeks of leave between the day of the death and 12 weeks after the latest day of either the funeral, burial or memorial service for the child. The child must be under the age of 18 or a dependent with a “mental or physical infirmity” as defined in the *Income Tax Act*,³⁰ such that the employee or their spouse or common-law partner is entitled to the Canada caregiver credit for the child.
- Where the employee or their spouse or common-law partner has a stillbirth or where they would have been a parent of the child born as a result of the pregnancy, the employee may take up to eight weeks of leave between the day of the stillbirth and 12 weeks after the latest day of either the funeral, burial or memorial service.

Clause 8(3) provides that clause 6.1, which address bereavement leave, will come into force on a day to be fixed by order.

NOTES

1. [Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), 44th Parliament, 1st Session (S.C. 2021, c. 27).
2. Government of Canada, [Bill C-3: An Act to amend the Criminal Code and the Canada Labour Code](#), Charter statement, 6 December 2021.
3. House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, [Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), First report, 15 December 2021.
4. Senate, Standing Committee on Social Affairs, Science and Technology, [The subject matter of Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), Second report, 15 December 2021.
5. Senate, Standing Committee on Legal and Constitutional Affairs, [The subject matter of clauses 1 to 5 contained in Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), Second report, 16 December 2021.
6. Note that two private member’s bills were introduced in the last Parliament to add as an aggravating factor when sentencing the fact that the victim of an assault is a health care worker. See [Bill C-202, An Act to amend the Criminal Code \(assault against a health care worker\)](#), 43rd Parliament, 2nd Session; and [Bill C-211, An Act to amend the Criminal Code \(assaults against health care professionals and first responders\)](#), 43rd Parliament, 2nd Session. Neither bill was adopted.
7. Employment and Social Development Canada, [Government of Canada introduces legislation to support workers with ten days of paid sick leave, protect health care workers and finish the fight against COVID-19](#), News release, 26 November 2021.

8. For a discussion of whether existing offences are sufficient to address these issues, listen to Minister O'Regan and criminal defence attorney Ian Runkle on *The House*. See Chris Hall, "[Will new measures to protect health care workers do the job?](#)," *The House*, CBC Radio, 27 November 2021.
9. Employment and Social Development Canada, [Government of Canada introduces legislation to support workers with ten days of paid sick leave, protect health care workers and finish the fight against COVID-19](#), News release, 26 November 2021.
10. [Telecommunications Act](#), S.C. 1993, c. 38, s. 2(1). Federally regulated businesses and industries include interprovincial and international services (e.g., railways, road transportation, air transportation and shipping services), radio and television broadcasting, telecommunications, banks, most federal Crown corporations and private businesses necessary to the operation of a federal Act. See [Canada Labour Code](#), R.S.C. 1985, c. L-2, s. 167; and Government of Canada, [List of federally regulated industries and workplaces](#).
11. Job protection means that no employer shall dismiss, suspend, lay off, demote or discipline any employee for taking these leaves of absence. [Canada Labour Code](#), R.S.C. 1985, c. L-2, s. 209.3(2).
12. *Ibid.*, s. 209.2.
13. See [Federal Public Sector Labour Relations Act](#), S.C. 2003, c. 22, s. 2; and [Parliamentary Employment and Staff Relations Act](#), R.S.C. 1985, c. 33 (2nd Supp.). See also Mayra Perez-Leclerc, [Legislative Summary of Bill C-220: An Act to amend the Canada Labour Code \(bereavement leave\)](#), Publication no. 43-2-C220-E, Library of Parliament, 16 March 2021.
14. Reasons related to COVID-19 that entitled employees to 42 weeks of leave included cases where children or family members contracted COVID-19 or were isolating, or where the facility normally attended was closed or the care services provided to the family member were interrupted, both stemming from reasons related to COVID-19.
15. Employment and Social Development Canada, [Backgrounder: Amendments to the Canada Labour Code to provide ten days of paid sick leave](#).
16. [Bill C-2, An Act to provide further support in response to COVID-19](#), 44th Parliament, 1st Session (S.C. 2021, c. 26).
17. For the purposes of bereavement leave, "immediate family" also includes: the employee's spouse or common-law partner; the employee's parent, grandchild, sibling, or grandparent; the parent, grandchild, sibling, or grandparent of the employee's spouse or common-law partner; or a relative who resides permanently with the employee. See [Canada Labour Standards Regulations](#), C.R.C., c. 986, s. 33(1).
18. [Canada Labour Code](#), R.S.C. 1985, c. L-2, s. 210(1). Under section 210(1.1), the employer may also, at the employee's request, extend the period during which the leave may be taken.
19. *Ibid.*, s. 210(2).
20. The definition of "family member" used for the purposes of compassionate care and critical illness leave under the *Canada Labour Code* is available in the Employment Insurance Regulations. It includes extended relatives such as aunts, uncles, nephews and nieces, as well as current or former foster parents or children, and ultimately may extend to any person "whom the individual considers to be like a close relative or who considers the individual to be like a close relative," regardless of relation. See [Employment Insurance Regulations](#), SOR/96-332, s. 1(3).
21. [Canada Labour Code](#), R.S.C. 1985, c. L-2, s. 210(1).
22. *Ibid.*, s. 206.5(2).
23. The first iteration of Bill C-220, as introduced on 25 February 2020, proposed amendments to compassionate care leave, rather than to bereavement leave. Specifically, it extended the period of compassionate care leave offered to employees by up to three weeks after the week in which the family member they were caring for died, as long as they had not exhausted the maximum 28-week entitlement for this type of leave. See [Bill C-220, An Act to amend the Canada Labour Code \(compassionate care leave\)](#), 43rd Parliament, 1st Session. See also Mayra Perez-Leclerc, [Legislative Summary of Bill C-220: An Act to amend the Canada Labour Code \(bereavement leave\)](#), Publication no. 43-2-C220-E, Library of Parliament, 16 March 2021.
24. See [Criminal Code](#), R.S.C. 1985, c. C-46, s. 423.1(1).

25. House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, [Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), First report, 15 December 2021.
26. House of Commons, [Journals](#), 16 December 2021.
27. House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, [Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), First report, 15 December 2021.
28. [Bill C-307, An Act to amend the Canada Labour Code \(bereavement leave\)](#), 43rd Parliament, 2nd Session.
29. In the bill, stillbirth is defined as:
 - the complete expulsion or extraction of a fetus from a person on or after the twentieth week of pregnancy or after the fetus has attained at least 500 g, without any breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle from the fetus after the expulsion or extraction.
30. [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.), s. 118.2(2).