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Legislative Summary

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

44-1-C3-E

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Legislative Summary of Bill C-3
(Preliminary version)

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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.

Bill C-3 amends two laws. The bill contains eight clauses, of which five pertain to the *Criminal Code* (the Code), two pertain to the *Canada Labour Code* (CLC), and one covers the timeline of its 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 two new aggravating factors in sentencing.¹ The Honourable David Lametti, P.C., Q.C., 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.²

1.1.1 Existing *Criminal Code* Offences

There are a variety of existing criminal offences that may be applicable in situations where a health care worker is intimidated or there is a protest near health care facilities where individuals are being obstructed or intimidated, depending on the facts of the case.³ These include the following provisions of the 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 Code also includes some offences related to specific types of victims, as is the case with the new offences being proposed. For example:

- section 51 (Intimidating Parliament or legislature);
- section 176 (Obstruction 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 “treating their illness or injury” as a valid reason for taking personal leave and instead 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.⁴

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 section 2 of the *Telecommunications Act*,⁵ are entitled to various unpaid and paid leaves of absence during which they shall benefit from job protection.⁶

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.⁷ 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.⁸

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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 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, is granted to the employee for various reasons, which until now included “treating their 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. This is 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. Every employer shall 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.”
- The 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 period of time to take leave for an indeterminate period of time 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(a) to 247.5(f) of the CLC.
- Leave related to COVID-19 (section 239.01 of the CLC) was created on a temporary basis in March 2020 and 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-19.⁹ 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 2021.¹⁰ Bill C-2, 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 due to reasons related to COVID-19.¹¹

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.

The proposed section 423.2(1) is drafted with some language similar to that of section 423.1(1) of the Code, which makes it an offence to intimidate a justice system participant or journalist.¹²

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 language in parts of the existing offence of mischief at section 430 of the 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 section 423.2(3), these are hybrid offences, meaning that they may be prosecuted by way of indictment, with a maximum term of imprisonment of 10 years, or by summary conviction, with 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 intimidation offence it is five years.

Section 423.2(4) provides a defence to the section 423.2(2) offence (Obstruction or interference with access) 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 existing offences such as sections 423 (Intimidation) and 430 (Mischief) of the Code.

2.1.2 Sentencing (Clause 5)

Section 718.2 of the Code outlines a number of principles that courts are to take into consideration when imposing a sentence. Section 718.2(a) provides a list of 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) will come into force on the 30th day after the day that the Act receives Royal Assent.

2.2 AMENDMENTS TO THE CANADA LABOUR CODE: MEDICAL LEAVE OF ABSENCE WITH PAY (CLAUSES 6 AND 7)

The existing section 206.6(1)(a) of the CLC states that “treating their 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,

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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 addressing 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.

Compared with the personal leave provision currently in effect, which an employee could take to treat their illness or injury, the new medical leave of absence with pay provides for a higher number of days of paid leave per year (10 instead of three), while ensuring that employees maintain their three days of paid personal leave to be used for the other reasons described in section 206.6(1). Access to paid leave is also faster under the new provisions for medical leave of absence with pay: employees earn it after one month instead of after three months.

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 is for all purposes considered to be wages. Clause 7(2) states, in new section 239(13)(a) of the CLC, that the terms "regular rate of wages" and "normal hours of work" may be defined by regulation.

New section 239(1.4) states that any days of medical leave of absence with pay that an employee has earned but not used during a calendar year are to be carried forward to the following year on 1 January, but deducted from the maximum number of days they can earn in the new year, in order to ensure that no more than 10 days of medical leave of absence with pay can be taken in a single calendar year. This ensures that the employee does 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 that the employer may require that each period of leave be of not less than one day's duration. This means that an employer could require that an employee use a full day of leave to go to a medical appointment, for example, instead of only the number of hours required.

New section 239(1.6) states that, 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 certifying that the employee was incapable of working during their leave.

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Until now, existing section 239(2) of the CLC outlined that the employer may require a certificate issued by a health care practitioner if the employee was taking a medical leave of absence for three days or longer. Under new section 239(2), small changes have been made 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, an employee may be asked to provide a medical certificate for any paid leave, regardless of the length of their absence, while in the case of unpaid leave the requirement applies only if the leave of absence is three days or longer.

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, which addresses medical leave. New section 239(13)(b) states that any provision under Division XIII of the CLC addressing 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, addressing medical leave of absence with pay as outlined in the CLC, will come into force on a day to be fixed by order.

NOTES

1. Note that two private members bills were introduced in the last Parliament to make the fact that the victim of an assault is a health care worker an aggravating factor when sentencing: [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.
2. 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.
3. 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 "[Will new measures to protect health care workers do the job?](#)" *The House*, CBC Radio, 27 November 2021.
4. 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.

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5. S.C. 1993, c. 38. 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 (section 167 of the CLC; see also Government of Canada, [List of federally regulated industries and workplaces](#)).
6. 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).
7. *Ibid.*, s. 209.2.
8. 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.), respectively. See also Mayra Perez-Leclerc, [Legislative Summary of Bill C-220: An Act to amend the Canada Labour Code \(bereavement leave\)](#), 16 March 2021.
9. 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.
10. Employment and Social Development Canada, [Backgrounder: Amendments to the Canada Labour Code to provide ten days of paid sick leave](#) [modified on 26 November 2021].
11. [Bill C-2, An Act to provide further support in response to COVID-19](#), 44th Parliament, 1st Session.
12. *Criminal Code*, R.S.C. 1985, c. C-46. That section reads as follows:
[423.1\(1\)](#) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in
 - (a) a group of persons or the general public in order to impede the administration of criminal justice;
 - (b) a justice system participant in order to impede him or her in the performance of his or her duties; or
 - (c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.