



**The CSQ opposes Bill C-525,
Employees' Voting Rights Act**

**Brief submitted to the Standing
Committee on Human Resources, Social
Development and the Status of Persons
with Disabilities**

**By the Centrale des syndicats du Québec
(CSQ)**

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The Centrale des syndicats du Québec (CSQ) represents over 200,000 members, including some 130,000 education workers.

The CSQ is made up of 11 federations that comprise 240 unions affiliated based on the sectors of activity of their members; also included is the AREQ (CSQ), the Association des retraitées et retraités de l'éducation et des autres services publics du Québec.

CSQ members occupy over 350 job classes. They are present at all levels of teaching (teaching, professional, and support staff), as well as in the fields of educational childcare, health care and social services (nursing, professional, and support staff, educators), recreation, culture, community services, communications and municipal services.

Furthermore, 75% of CSQ members are women and 30% are under the age of 35.

Presentation of Bill C-525

Bill C-525, ironically named the "*Employees' Voting Rights Act*", aims to amend three distinct laws, namely the *Canada Labour Code*, a statute of general application for federally-regulated enterprises, the *Parliamentary Employment and Staff Relations Act* and the *Public Service Labour Relations Act*. This bill will thus have a major impact on all employees of federally-regulated enterprises as well as those of the federal government.

Objective

What is clear, both from the text of the bill itself and from the House of Commons debates, is that not only does this bill create considerable and undeniable hurdles for unionization of all employees from these sectors; it also treats federal employees differently, as if they were less entitled to collectively defend their rights. How can one believe then that the bill aims to give a voice to the silent majority of members who, according to MP Blaine Calkins, would otherwise not have a say in this regard under the current system, when the act itself shortchanges this majority?

Amendments made to the *Canada Labour Code* and to the *Parliamentary Employment and Staff Relations Act*

Article 28 (c) of the *Canada Labour Code* allows for automatic certification when the trade union proves that as of the date of the filing of the application, the majority of the employees in the unit wish to have the trade union represent them. This simple, one-step procedure is completed by the first paragraph of Article 29, which stipulates that the Canada Industrial Relations Board can always order that a representation vote be taken if it considers such a measure necessary to determine the true intent of workers affected by the certification application. It is also stipulated that whenever between 35% and 50% of workers have expressed their support for the trade union by signing a membership card, a vote by secret ballot will automatically be ordered.

This system, which allows for automatic certification by the signing of union membership cards, is simple, efficient, and presents adequate guarantees of impartiality and control of the true desires of the workers. The flood of complaints supposedly filed against trade union organizations to justify the disparaging position of the party in power is simply unfounded.

However, the bill introduced by MP Blaine Calkins would result in greatly modifying, under false pretences, the balance reached so far by radically modifying the proposed rules. In effect, it would no longer be possible to automatically achieve certification through the signing of union cards, regardless of the number of signed cards collected. In all cases, the Board shall order a representation vote to be taken

by secret ballot, the guidelines for which are unknown; this constitutes a two-tiered certification procedure.

For example, in order to ensure that the period between the order to vote and the vote itself does not evolve into an intimidation period and anti-union campaign, provincial legislators have prescribed maximum periods of between five and fifteen days for holding a vote. However, no time frame is specified in the bill, leaving this fundamental question open to interpretation, and subject to the resources available to the Board.

This bill is also problematic with regard to the revocation of certification since the established procedures will have the effect of rendering the certification more fragile. Indeed, by allowing a vote to be requested whenever a mere 45% of members have voiced their support for revocation of certification, the bill opens the door to fear-based campaigns and instability of labour relations, which would hardly be in the best interest of workers or their employers. In short, it is a true attack on industrial peace.

The very same situation holds true with regard to the *Parliamentary Employment and Staff Relations Act*. The bill, for which there is no bonafide justification, would make a mess of the certification rules that have worked perfectly well in the past.

Public Service Labour Relations Act

The true shortcoming reveals itself when we examine in detail the provisions that would apply to federal employees in the event this bill becomes law. Indeed, not only would these employees see their system of union recognition completely transformed on mere ideological grounds, but they would also be subject to clearly unfavourable rules designed to punish those working for the public good who dare to adopt a discourse or actions that run counter to the conservative politics of the Harper administration.

Indeed, the current system affords the Board broad discretion to assess the facts of the situation upon receiving an application for certification and thereby determine the true will of the workers concerned. The Board has the choice of either automatically certifying the union applying when it is satisfied that it represents the majority of workers concerned by the unit, or to demand that a representation vote be taken. According to Bill C-525, not only would the Board lose this flexibility and thus the ability to render the process more straightforward and efficient, but the rules established would result in giving a voice to those who expressly refuse to exercise their right to be heard. In this regard, by changing the required threshold from the majority of votes cast to the majority of all workers in the unit being certified, the choice against unionization is being attributed to – if not imposed – on non-voters!

But what is still more worrisome and which demonstrates the true intention of the Conservatives to eradicate trade union organizations from the federal public sector, is that the rules for revoking certification have been amended so as to contradict any democratic ideal that supposedly underlies the proposed changes. Article 12 of Bill C-525 stipulates that, upon request of at least 45% of the employees of the unit, a secret representation vote shall be ordered to survey the will of the workers to maintain their membership in the trade union in question. Where the hypocrisy becomes apparent is when we realize that – without any valid justification for the measure – a vote demonstrating a mere 45% of workers to be in favour of de-unionizing would be sufficient grounds for the Board to order the revocation of the certification.

How can MP Blaine Calkins seriously maintain that: "The bill (...) proposes a balance in the certification or decertification process of a collective bargaining unit, without favouring either the trade union or the management.¹" when the rules are so clearly unfair? How can one genuinely maintain that "democracy is of fundamental importance²" when one takes the liberty to define such democracy differently depending on whether it is a question of certifying or decertifying a trade union? The answer is in the question.

Elsewhere in Canada

In order to assess the appropriateness of the changes proposed by the bill under study, the Canadian reality as a whole must also be examined. When such a review is conducted in a rigorous manner, various observations can be made. Firstly, in jurisdictions where, in recent decades, mandatory voting has been adopted as a means of obtaining trade union certification, the process has grown more complex, which has resulted in a drastic reduction in the success rate of applications for certification³. Secondly, the majority of Canadian provinces, including Quebec, still believe that the best means of maintaining a healthy balance in labour relations and affording employees the opportunity to peacefully express their wishes is to allow for automatic certification once the majority of employees have signed union membership cards.

Lastly, and what is probably the most important thing to realize, is that in all provinces in which mandatory voting has been enacted, the legislator recognizes that the true will of the employees is determined by obtaining a majority of voters and not by a random ploy which results in effectively forcing a vote by all those who, for various reasons, would otherwise not have exercised their right to vote⁴.

¹ CANADA, HOUSE OF COMMONS (2013). Official Report of Debates, October 29, p. 568.

² CANADA, HOUSE OF COMMONS (2013). Official Report of Debates, October 29, p. 568.

³ See notably the statistics transmitted by Alexandre Boulerice in his speech at the House of Commons on October 29, 2013.

CANADA, HOUSE OF COMMONS (2013). Official Report of Debates, October 29, p. 571.

⁴ See for example Article 10 (1) of Ontario's Labour Relations Act, 1995, Article 8 of Nova Scotia's Trade Union Act or Article 25 of British Columbia's Labour Relations Code.

Adopting the measures specified in Bill C-525 would have the effect of going beyond what is practised in the conservative provinces of Western Canada and further upset the balance so critical for healthy labour relations and a labour market that caters not only to management and the wealthy.

Response to arguments put forth by Conservative MPs in Second Reading of the bill

Bill C-525 was debated only twice in the House of Commons on Second Reading: October 29, 2013 and January 28, 2014. Both times, MP Blaine Calkins, who tabled the bill, justified his initiative by speaking incessantly of democracy and condemning trade union intimidation, which one of his constituents apparently informed him of.

Conservative MP Larry Maguire supported his colleague, stating "the House of Commons Committee will carefully review this legislative measure and consult the main parties concerned for their feedback and opinions"⁵.

The first question that arises is: why are Conservative MPs preventing a true democratic debate of an issue as important as that of employees' right to vote? If Conservative MPs upheld democracy as much as they claim, such a major issue would not be addressed by a parliamentary initiative, but rather by a bill tabled by the Minister of Labour. In such a scenario, the Minister would make her pitch to the business community and the trade union organizations, and formal consultations would be held. The said Minister would then conduct an in-depth study to support the amendments deemed necessary to the legislation governing labour relations.

That is not the case here. No consultation worth mentioning has been organized with employers' and workers' associations, and yet the government is preparing to radically and unilaterally modify the model for trade union certification. At the very most, it deigns to allow opposition parties barely four hours for debate. Not only does this not allow organizations the time to be heard and to debate with parliamentarians, but additionally, the debate begins on February 11, the same day of the release of the federal budget and in the midst of the Winter Olympics. Everything seems to be orchestrated so that these debates take place under the radar of the media.

This demonstrates that, in reality, the goal of MP Blaine Calkins is not to promote democracy in the workplace, but rather to reduce union presence in enterprises concerned by the *Canada Labour Code* and in the federal public sector. How so? By imposing a two-tiered certification procedure (card signatures plus mandatory voting) and by facilitating de-unionization.

⁵ CANADA, HOUSE OF COMMONS (2014). Official Report of Debates, 41st Parliament, 2nd Session, no 036, Vol. 147, January 28, p. 2269.

Is certification by means of a system of union membership cards any less democratic than a system of voting by secret ballot?

Bill C-525 not only imposes the secret ballot system, but also a two-tiered certification procedure. Thus, the obligation of having union cards signed or obtaining the support of a predetermined proportion of bargaining unit members will remain. The only thing that will change is that certification based solely on this criterion will no longer be possible.

Such a two-tiered certification procedure is in effect in several American states, and has been highly effective in reducing unionization. Indeed, the empirical results show that mandatory votes reduce certification success rates by approximately 9 percentage points below what they would be under card check⁶.

For example, from 1984 to 1993, when certification elections were mandatory in British Columbia, certification attempts fell by around 50 percent. Moreover, the change to mandatory elections accounted for virtually the entire 19 percentage point decline in private sector certification success rates that occurred over the 1984 to 1992 period⁷.

This major reduction is due to the fact that between the time the union cards are submitted and the date of the secret ballot, the employer has free time to intimidate employees who wish to unionize, threaten them with reprisals or hire new redundant staff to inflate the number of employees in the unit.

In this vein, American researcher Kate Bronfenbrenner analyzed elections held under the auspices of the *National Labor Relations Board* between 1999 and 2003 to demonstrate the magnitude of employer intimidation in the United States during certification votes whereby⁸:

- 63% of employers interrogated employees during mandatory one-on-one meetings with their supervisor;
- 54% threatened employees during these meetings;
- 57% threatened to shut down the facilities;
- 47% threatened to cut wages and benefits;

⁶ JOHNSON Susan (2002). "Card Check or Mandatory Representation Vote? How the Type of Union Recognition Procedure Affects Union Certification Success", *The Economic Journal*, Vol. 112 (April), p. 344.

⁷ D. CHANDLER, Timothy and Rafael GELY. "Card-Check Laws and Public-Sector Union Membership in the States", *Labor Studies Journal*, p. 447. <http://lsj.sagepub.com/content/36/4/445>

⁸ BRONFENBRENNER, Kate (2009). "A War Against Organizing", *The Washington Post* (June 3).

- 34% fired workers.

Evidently, it is not just in the United States that employers are found to resort to intimidation. In 1993, the Service Employees International Union (SEIU) conducted an organizing drive at a McDonald's franchise in Orangeville, Ontario, during which 67 of the 102 employees signed union cards. However, the employer disputed the manner in which the cards were signed and, consequently, the Labour Board ordered that a vote be taken. The employer then waged an aggressive anti-union campaign which resulted in only 19 persons voting in favour of unionizing⁹.

Strangely enough, while MP Blaine Calkins criticizes the alleged union intimidation, he didn't utter a word on the matter of employer intimidation. Further, Bill C-525 does not prescribe any measures to ensure that inappropriate pressure tactics are not used by the employer. Nor does it prescribe any penalties for employers who resort to intimidation of employees who want to unionize. Once again, it draws on the details of American laws passed in Republican states.

Mandatory voting would allow all employees to express their will

On October 29, 2013, taking the floor in the debate on this bill, Ms. Cathy McLeod, Parliamentary Secretary to the Minister of Labour, condemns the fact that "under the current system, if 11 employees out of 20 sign a union membership card, the nine others may not be invited to sign a card and may not even be aware that their colleagues wish to unionize¹⁰". According to Ms. McLeod, mandatory voting would allow all employees to express their will.

Aside from the fact that this is highly hypothetical (what motive would a union have to not attempt to encourage all employees to sign union membership cards?), the fact that employees already have the chance to express their wishes by choosing whether or not to sign their membership card cannot be denied. Moreover, when a vote is requested by the certification agent, all employees have the opportunity to vote.

Comparison to elections

All Conservative MPs who voted in favour of Bill C-525 made reference to Canadian elections, which are conducted via secret ballot. In our view, this comparison appears quite flawed.

⁹ PUPO, Norene and Mark P. THOMAS, *Interrogating the New Economy: Restructuring Work in the 21st Century*, University of Toronto Press, 2010, p. 241.

¹⁰ 10 - CANADA, HOUSE OF COMMONS (2013). *Official Report of Debates*, 41st Parliament, 2nd Session, no 010, Vol. 147, October 29, p. 576.

Firstly, they're comparing apples and oranges. It would be unimaginable in federal elections to use a process of signing political party membership cards to determine one winning candidate or another.

Secondly, in an election, the votes of those who do not cast a ballot are not counted. Why does Bill C-525 always tally votes unfavourably for the union position, both in a certification vote and in a decertification vote? The answer is in the question. This bill exhibits a blatant anti-union bias. It does not aim in any way to foster democracy in the workplace, but rather to reduce union presence, which would have catastrophic effects on the Canadian economy.

Acting in the interest of the economy

More and more people in the West are speaking out against income disparity. Even the very wealthy and powerful participants of the World Economic Forum in Davos (Switzerland) in January 2014 examined the dangers of increasing social disparity for global stability.

If the Conservatives are as concerned about the economy and the middle class as they claim to be, they should oppose Bill C-525. In fact, if this bill sparks a decline in union representation in Canada, it will also result in lower standards of living for the middle class, as demonstrated by a study conducted by Statistics Canada: "Although differences in earnings and non-wage benefits cannot be attributed solely to union status, the union wage premium (after adjusting for employee and workplace characteristics) has been estimated at 7.7%."

In short, workers will earn less, and there will be an increase in inequalities, as we have seen in the United States.

Conclusion

Far from targeting democracy in the workplace, bill C-525 aims at Conservative ideological objectives by directly attacking the trade union movement. It is one of a series of anti-union measures such as Bill C-377 and several aspects of Bill C-4 that notably amended the section on essential services in the *Public Service Labour Relations Act*.

It is imperative that the House of Commons reject this bill for the sake of democracy and industrial peace as well as on economic grounds.

Recommendation

The Centrale des syndicats du Québec recommends that the House of Commons reject this bill for the sake of democracy and industrial peace as well as on economic grounds.



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