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Thursday, March 25, 1999

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Thursday, March 25, 1999

The Senate met at 9 a.m., the Speaker in the Chair.

Prayers.

GOVERNMENT SERVICES BILL, 1999

CONSIDERATION IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole on Bill C-76, An Act to provide for the resumption and continuation of government services.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, in accordance with our agreement, I would ask His Honour to leave the Chair and that we resolve ourselves into Committee of the Whole on this bill.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, because of where the chairman sits, I would ask whether it is possible to permit the senators whose seats are behind or too far distant to sit in other seats so that they can be closer to the witnesses, and that they can be seen by the chair. I do not think the rules allow that.

Hon. B. Alasdair Graham (Leader of the Government): It is acceptable procedure, honourable senators.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole, the Honourable Peter A. Stollery in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole on Bill C-76, to provide for the resumption and continuation of government services.

We have certain witnesses who have agreed to appear before us. Are honourable senators prepared to hear those witnesses now?

Hon. Senators: Agreed.

Senator Carstairs: Honourable senators, I would ask that the Honourable Marcel Massé, President of the Treasury Board, be invited to participate in the deliberations of the Committee of the Whole.

Pursuant to rule 21 of the *Rules of the Senate,* the Honourable Marcel Massé, President of the Treasury Board, and his officials, Mr. Pierre Hamel, General Counsel, Treasury Board Secretariat; and Mr. Alain Jolicoeur, Chief Human Resources Officer, Treasury Board Secretariat, were escorted to seats in the Senate Chamber.

•(0910)

The Chairman: Honourable senators, it would be appropriate if I introduced the witnesses to the Senate. Mr. Pierre Hamel, General Counsel, Treasury Board Secretariat; and Mr. Alain Jolicoeur, Chief Human Resources Officer, Treasury Board Secretariat.

Senator Kinsella: Honourable senators, I would offer the reminder that it is not necessary to stand in Committee of the Whole, neither the Chair, the witness nor any honourable senator. We can speak from our seats.

The Chairman: Thank you, Senator Kinsella, for that important advice.

Mr. Minister, would you like to open the proceedings?

[*Translation*]

Hon. Marcel Massé, President of the Treasury Board and Minister responsible for Infrastructure: Honourable senators, as you all know, the government was able to reach an agreement in principle with the Public Service Alliance of Canada late Tuesday evening. An agreement in principle constitutes an important step in the bargaining process, but the agreement requires ratification. The government cannot delay action until the voting results on ratification by the union membership are known. It is still urgent to act in the taxpayers' interest, while respecting the interests of our employees at the same time. This agreement in principle strikes me as equitable and generous, but it does not guarantee an end to the rotating strikes. We had proof of this again yesterday. Unacceptable and unfortunate incidents occurred again yesterday in far too many locations across Canada, marking the worst day in the six weeks of rotating strikes.

We have an obligation toward Canadians. We must continue our efforts to assure Canadians that the services provided by the blue-collar workers return to normal, and that those provided by the correctional officers in the penitentiaries are not interrupted.

In recent months, we have signed numerous collective agreements with more than 87 per cent of our employees. Today, the government is asking you to impose a return to work and a collective agreement on its 14,000 blue-collar workers. We are also asking you to adopt measures that might prove necessary to keep the 4,500 or so correctional officers on the job and to get them back negotiating as soon as possible. Government intervention at this time is urgent.

[*English*]

Canadians, as much as the government, can no longer accept that passenger travel continues to be disrupted in the country's airports. Neither can we accept that tax and GST collection have become so much more difficult.

Honourable senators should know that more than one million taxpayers will experience delays in their tax refunds because of these strikes. Picket lines and the withdrawal of services have considerably disrupted the operations of National Defence, the Coast Guard and Public Works.

[*Translation*]

The strike is also affecting our grain exports threatening a major sector of the Canadian economy, our excellent international reputation and our international trade relations. This situation is having a very serious impact on western grain farmers. They can no longer send their grain to foreign markets. Their revenues are ruined once the price of grain drops and they on the verge of planting their fields.

The Canadian Wheat Board has revealed it lost a $9-million sale and had to let go a number of other potential sales, because delivery was not assured. If Parliament does not authorize the government to force a return to work, we may well lose new contracts on foreign markets. That would mean lost jobs in addition to tarnishing Canada's international reputation in a world where foreign trade is the means to prosperity.

[*English*]

Mr. Chairman, increased tension on the picket lines has resulted in acts of vandalism and unfortunate incidents. Members of the police force have had to be called in to intervene, and the government has had to resort to injunctions to enforce the law on behalf of all Canadians.

[*Translation*]

Impasses in negotiations, salary demands, labour stoppages and rotating strikes, interruptions in service, the threat to public safety — for all these reasons, the government is asking you to give it the means to act quickly.

[*English*]

In the public interest, the government must exercise its responsibilities with concern both for the principles that underlie healthy labour relations and for the sound management of the country's affairs. This is a delicate balance that pits respect for the bargaining process we believe in against the need to ensure the common good.

It is incumbent upon both the government and the union not to abuse the unusual relationship of power they hold within the context of negotiating working conditions in the federal public service.

[*Translation*]

The dispute between the employer and the corrections officers is of a different nature and represents a danger of some concern for public safety.

[*English*]

We wish to ensure the safety of the public; however, we also wish to ensure that these employees receive the same benefits as those who have already signed collective agreements.

[*Translation*]

The bill providing for the resumption and maintenance of government services will put an immediate end to the rotating strikes of the seven groups of blue-collar workers. It will assure Canadians that, should the agreement in principle be rejected, these government employees will still have a new collective agreement. It will also in the end allow the government, given the type of work performed by the 4,500 corrections officers, to impose a collective agreement, should this prove necessary.

The government, like our fellow citizens, can no longer tolerate the work stoppages and their effects on the public and the services provided them by the Government of Canada. I, therefore, ask you to act as quickly as possible in everyone's interest.

[*English*]

Honourable senators, I am now ready to answer your questions.

Senator Lynch-Staunton: Mr. Minister, I wish to repeat what I have said on previous occasions when similar legislation has appeared before us, that back-to-work legislation is bad legislation. It indicates that the bargaining process does not work. This is the fifth such piece of legislation we have had since 1993. We have had this kind of legislation under previous governments as well. Legislation of this nature seems to be more the rule than the exception. Surely the government shares my view, though perhaps not as strongly.

What is it in the bargaining process that too often results in back-to-work legislation? What is it that falls apart along the route? Are there no corrections possible?

•(0920)

Mr. Massé: Mr. Chairman, in the last two years, 80 per cent of our employees have agreed to settlements that have been negotiated. Therefore, we have managed to agree with a large majority of our employees in terms of working conditions.

I agree with you that the principle of the system we have is one where working conditions should be agreed to between the employer and the employee. I agree that we should have as few pieces of back-to-work legislation as possible. We should only see back-to-work legislation when the negotiating process has not worked, and that should only be in exceptional cases.

In the case of the blue-collar workers, we have a tentative agreement. If that agreement is ratified, almost 97 per cent of our employees will have solved their problems through collective agreements.

We reached an agreement with the negotiators for the 4,500 correctional officers. That agreement was endorsed by the union and the union recommended it to its members. Unfortunately, the agreement was not ratified, by a rather small margin of, I think, 57 per cent.

Apart from those two groups, which, as I said, constitute only 13 per cent of our employees, the system has worked reasonably well.

Some may speculate that games are being played on both sides; in other words, that the union has an interest in finding out whether the 2.5 per cent and the 2 per cent, which have been the norm in these negotiations, is the norm that should continue. Therefore, since we will be in the bargaining process within six months, they may decide to try the system, which means going to the eleventh hour the night before back-to-work legislation is passed, before concluding.

I do not know what the intentions of the unions have been in this process, but they have tried out the process. The government can confirm that the basic agreement of 2.5 per cent and 2 per cent, which we have with 80 per cent of our employees, is the agreement that we will apply with equity across all groups.

Senator Lynch-Staunton: I am sorry that you were not able to tell me that questions were being asked by you as the employer and the labour department to try to find the flaws in the process — unless it is just human nature that cannot be legislated — that could diminish the need for this kind of legislation.

We give the right to do something, and then, when it does not suit us because the right is used to excess by someone's definition, we take that right away. The right to strike is a fundamental right. It is the only significant pressure tactic a union has when the others do not work. The employer has the edge. The employer can simply take that right away when it thinks the employees have gone too far. There is an imbalance in that. It is too heavily weighted on one side.

You mentioned that injunctions have been taken out. I am thinking of the grain handlers on the West Coast. Are any other injunctions being sought to stop disruptive tactics? How far have you gone to get injunctions to stop certain disruptive activities?

Mr. Massé: A number of injunctions have been taken out with regard to the Revenue Canada offices in British Columbia, and that has helped to improve the service. That has not worked as well in the eastern provinces where the law has been interpreted in a slightly different way.

In the case of grain handlers, we tried a number of means, including injunctions. There is a way to bypass those who weigh the grain. However, once that was done, PSAC members formed a line and it was the refusal of workers from other unions to cross that line that prevented the work from being done. Therefore, an injunction would not have been useful in that case. The only solution is to order them back to work and to prevent them from establishing picket lines.

Senator Lynch-Staunton: Have you tried to get injunctions against employees and supporters gaining access to airports?

Mr. Massé: We did not have much success with injunctions. We tried to get injunctions with regard to some of the penitentiaries and we won the first round but lost the second. This is an interesting point because normally workers apply pressure by withdrawing their services. However, when workers block passengers from reaching an airport, I believe that that is when the line is crossed. It is when the strike is extended to areas like this that we conclude it has gone far enough and it is time to introduce back-to-work legislation.

Senator Lynch-Staunton: However, this law, if passed, will not guarantee that those tactics will not continue, because they go beyond regular strike action. That is the problem.

What are the major differences, if any, between the imposed settlement, the details of which we have, and the negotiated settlement?

Mr. Massé: When we reached the tentative agreement with PSAC, it was agreed that neither side would publicly reveal the details so that the union would have time to talk to its members. In fact, I heard this morning on the radio that PSAC was recommending that its workers accept the agreement that we initialled a few days ago.

The details are technically not known, but I will repeat those that I heard on the radio, which were revealed by Mr. Bean. He indicated that rather than 2.5 per cent and 2 per cent we have gone to 2.75 per cent and 2 per cent. There is an increase in the basic salary. As well, having changes in the zones gives an advantage to the Atlantic provinces, where the poorest paid workers are located. It brings them up to the level of the sixth province, which I believe is Quebec, in the 10 regions.

Senator Lynch-Staunton: We are asked to evaluate the significance of a tentative settlement, yet we have nothing before us to discuss. However, from what you have just told us, it sounds as though the tentative settlement is more attractive than the imposed settlement. Is that fair?

Mr. Massé: Yes. According to our calculations, the tentative settlement adds about 1 per cent to the settlement that would have been imposed by law. One per cent is not an extraordinary large change, but in terms of these negotiations it is a generous change. We did it because, in this case, it benefited the people who earned the least. That counterbalanced the fact that it increased the cost of the settlement for the government.

Senator Lynch-Staunton: Therefore, it would be fair to say that, if I were a union member, I would support the tentative settlement rather than having imposed on me a less attractive settlement. Is that a fair assessment?

Mr. Massé: Yes, it is.

Senator Lynch-Staunton: If that is so, why the urgency for this law? Why do we not return to the normal situation and await the expected acceptance of the tentative settlement, since the alternative is not as attractive? Am I correct that the vote is to take place next week?

Mr. Massé: The vote will probably be some time next week. However, we can only hope that the agreement will be ratified. There will be a period of time before ratification. During that period, rotating strikes continued. As I mentioned yesterday, they have been the worst in the past 10 weeks. They continue to create problems in the economy. The union has indicated that they will ratify the agreement in a week. However, normally, they have a period of between two weeks and six weeks to ratify. Also, we cannot be sure that they will ratify, so we cannot let the emergency continue.

•(0930)

Senator Lynch-Staunton: I have one last question of a general nature, and it is one that you will not answer. I do not see how rotating strikes, if they are done properly, are reason enough for emergency legislation. I can see where disruptive tactics, which are an extension of rotating strikes, could lead, unfortunately, to what we are looking at today.

Is the right to strike being given too generously? Legislation such as what is before us is always brought in as a result of an excessive use of the right to strike. The fundamental clause in this bill removes the right to strike and tells the workers to go back to work, or else.

Mr. Massé: As you said, I will only comment on your remark. The right to strike is essential to collective bargaining. The vast majority of our settlements have been through collective bargaining. The right to strike is clearly not an absolute. When it is misused, overused, and when it leads to excesses, as I think, unfortunately, has happened in this case, it must be curtailed when it affects the common good. We believe this is what has happened in this case. I refer to the disruptions at Dorval airport, in grain transportation, and so on.

I do not think you have to condemn the right to strike in this case. However, you have to say that if it is abused, it is the duty of the government to deal with the abuse and to operate so as to minimize, restrict or prevent the improper use of the right to strike.

Senator Murray: As Senator Lynch-Staunton has pointed out, virtually every Parliament has been called upon, at least once, usually several times, to act in situations of this kind. We are called upon to end a strike or to prevent a strike or a lockout in the federal jurisdiction when the government makes a judgment call that the national interest is at stake or would be damaged by a continuation of, or by the launching of, an industrial action of some kind.

I think all of us should be alert to see whether new ground is being broken in any way when these pieces of legislation come to us. We are familiar with bills that provide for compulsory arbitration of a labour dispute. We have had those.

Less frequently, Parliament is called upon to impose a settlement on the parties, but that has happened.

This time, we are being called upon to grant to the Governor in Council the power, effectively, to impose its terms. Just to rub it in a little bit, the Governor in Council will act on the recommendation of the Treasury Board who is the employer.

I cannot recall previous provisions of this kind. I invite you, minister, to cite precedents for clause 7(1) of this bill.

Mr. Massé: There are no precedents. This is a new case. I say that because this measure was tabled for the CXs, into which group correctional officers fall. The workers in this group have been declared essential. The reason for this, of course, is that you cannot have one riot in a prison because it will create problems involving the security of prisoners or the public at large. You cannot let the prisoner guards walk out, leaving the inmates without surveillance.

In this case, there was an agreement to have all the workers in Correctional Services designated as essential services. Through a loophole in the application of the legislation, however, between 500 and 600 of these prison guards were not designated. As a result, there is the possibility of a strike.

In this case we are not removing the right to strike. Technically, the intention was that they would all be designated essential. There is no right to strike in that group.

Yes, in this case we are preventing a right to strike. However, we are preventing a right to strike which, in a way, did not exist except for the use of that loophole in the law.

Senator Murray: That was not my point, minister. The point is that rather than have arbitration to impose a settlement, or rather than come here and place the details of the settlement before Parliament and have us vote on it, you are giving the Governor in Council the power to impose a settlement — as I say, just to rub it in on the unions, the Governor in Council will do so on the recommendation of the Treasury Board. That is the precedent. I hope someone will explore the history of the circumstances of that particular group and the loophole before we are finished here. Those circumstances seem irrelevant to the point I am making. I think it is a bad precedent.

Mr. Massé: On that point, the terms that we would have put in place for the collective agreement for the blue-collar workers themselves were the terms agreed to by the conciliation board report. They were in line with a long list of agreements. As you know, there are hundreds of clauses in these agreements that had been negotiated at some point. Many of them had been agreed to.

On the terms which have not been agreed to, we relied on a recommendation of the conciliation board report. That was not discretionary in the case of the blue-collar workers.

Given that we have a tentative agreement, that means there is a good possibility that the terms imposed will be the terms that will be agreed upon between the employer and the employee.

In the case of the CXs, what we would have imposed and what we may have to impose in the legislation is the terms of the first agreement between the employer and the representatives of the employees. You will remember in the case of the CXs that we had come to an agreement. That proposal was not only agreed to by their negotiators, it was supported by PSAC, and was put out for a ratification vote but was not ratified.

Thus, in this case, once again, what would be imposed is not the will of Treasury Board, but the agreement that was almost ratified but not quite ratified.

Senator Murray: Obviously, I take your word for that, minister. The bill is silent on those matters. I am very concerned about the precedent that we are setting here. I wonder about it, and wonder whether, next time we have a case like this, we will have a similar — or even identical — clause under considerably different circumstances, and the precedent of 1999 and Bill C-76 will be cited to us.

•(0940)

Before I conclude, your statement is that you have accepted the reports of the conciliation board in this dispute. Is that right?

Mr. Massé: For the blue-collar workers, yes, we have accepted it, but this will be superseded if the initialled agreement is ratified, and that agreement is more generous than the conciliation board report.

In the case of the CXs, we did not accept the conciliation board report.

Senator Murray: I am sure you can cite a precedent for that as well, for the government turning down the report of the conciliation board.

Mr. Massé: There are lots of examples. The fact that the union itself refused the conciliation board report on the blue-collar workers is the inverse of our refusing this conciliation report for the CXs.

Senator Kinsella: Senator Murray referred to clause 7, which deals with the general workers. It is my belief, minister, that if this bill passes, the awesome and unprecedented power thereby that will be given to Treasury Board to effectively write the collective agreement and pass it on to the Governor in Council, has thrust a tremendous sword into the midst of the collective bargaining process. There is no third-party intervention.

In previous legislation of this sort, as Senator Murray has pointed out, there was either binding arbitration or Parliament exercised the function and role of the third party by defining the terms and conditions of the new contract.

First, looking at clause 7, because it speaks to a different situation, would you repeat your position as to the general workers and the giving of this power to the Treasury Board to determine, unilaterally, their contract?

Mr. Massé: Senator, I am told that there may be a precedent in the provinces where exactly this procedure was followed. In our case, yes, usually the process has been arbitration. However, we suspended arbitration by legislation in 1996 because we wanted to make sure that the agreements that we had with our workers could not throw out of kilter the new fiscal discipline that we were imposing all across the government. You will remember that we had frozen the workers' salaries for a number of years, and we could not have judgments in arbitration that would contradict that law, which applied to everyone.

In this case, I stated in the Commons — and I am repeating here — what the terms are that the government will impose, so that we do not have the ability to start from scratch and to write a totally new agreement at our discretion.

I would underline, however, that not only do we continue to be in contact with the unions but we continue to have to employ these workers long-term, so the possibility that we could abuse the right to put into place a collective agreement that would be detrimental to the workers or to the unions remains slight. We are constantly in negotiations with our partners, with the representatives of the employees. Indeed, we have already begun the process of renegotiating collective agreements that will expire at the end of May or at the beginning of June. Because we are part of that continuing relationship, while your point is technically correct in that the clause does give the government a discretionary power, this bill is not likely to lead to an abuse of power.

Senator Kinsella: Thank you for that, minister. We now have on the record that this is a very serious and fundamental change to public service labour relations, and it seems to me there is a mitigation by the circumstances in this particular case, namely, the agreement to which you referred earlier affecting the general workers.

Let me now turn to clause 20 in Part 2 of the bill, which deals with correctional officers. That is what you focused on in your answer to Senator Murray.

Think for a moment, Mr. Minister and honourable senators, of this second group of public employees, the correctional officers. There is a separate section of the bill dealing with them. My first question on this is one of principle. Why did you deem it necessary to have two different sections of this back-to-work legislation, one dealing with the general workers and one dealing with correctional officers, as opposed to having a general law applicable to both?

Mr. Massé: For one technical reason: The blue-collar workers have had the right to strike since December 16 and, in fact, have been striking. Therefore, what we needed for them is back-to-work legislation to prevent the effects of the strikes immediately.

In the case of the correctional officers, we knew that they would have the right to strike as of Friday of this week. We have continued to negotiate with these groups because we think there is still a possibility of settlement, not at what they are asking but because, in the case of the correctional officers, we came very close to an agreement before. We knew we could not let them strike, not even for one day, because they are an essential service. At the same time, they were not yet in a position to strike, and we are always taking into account the fact that there could be an agreement. Therefore, the clause that we put in there is that we may apply the act to them by Order in Council. If something happens, we must be able to react immediately to prevent them from walking out.

Senator Lynch-Staunton: For clarification, when you talk about the possibility of correctional officers walking out, are you talking about the 4,700 or the 738 who have not been designated?

Mr. Massé: I am talking about the 500 to 600 who, through the application of that loophole, have the right to strike. However, obviously, once they go out, how much support there will be from the others, whether they will refuse to cross the picket lines and so on, we do not know, and we must be in a position to prevent them from striking at all.

Senator Lynch-Staunton: If you are designated part of an essential service, you must report for work, picket line or no picket line. Is that not correct?

Mr. Massé: Principally, yes.

Senator Lynch-Staunton: Why would you infer that if the 600 or 700 went on strike, the other 4,500 would not report for work?

Mr. Massé: First of all, just the 500 to 600 going out would cause considerable problems. We cannot let them strike. They are all designated essential services because they are all necessary.

•(0950)

Senator Kinsella: Let us be very precise about this issue.

First, how many correctional officers are we discussing at Corrections Canada?

Mr. Massé: There are 4,500.

Senator Kinsella: How many of those 4,500 are already designated "essential service"?

Mr. Massé: That 4,500, minus 500 to 600.

Senator Kinsella: Therefore, there are 4,000 correctional officers who have been designated as "essential service." In other words, they may not walk off the job or strike, et cetera. Where are they designated as "essential service"? What instrument defines that?

The Chairman: While the minister is consulting, I should like to remind Senator Kinsella that we have about 10 minutes left. Please be conscious of the fact that Senator Lawson also has a question.

Senator Kinsella: What is the reason for the time limitation?

Senator Stollery: I believe that the minister must leave at about ten o'clock.

Senator Kinsella: The minister has a bill for which he is responsible and we are just beginning our study of it. What do you mean by saying that the minister must leave?

Senator Carstairs: Senator Kinsella has known about this limitation of time and the honourable senator agreed to this yesterday.

Senator Kinsella: We agreed that officials will stay behind.

Senator Carstairs: That is correct, and the officials will stay behind.

Senator Lynch-Staunton: Some of us are not familiar with the plan. The minister must leave at ten o'clock, and we respect that. The officials will stay behind in order to respond to questions of fact and background material, but not policy. How long can they stay? We do not want to impose on them, either. They have other responsibilities also.

Senator Carstairs: They will stay for a reasonable length of time.

Senator Lynch-Staunton: If that is convenient with them, that is most satisfactory to us.

Mr. Massé: All 4,500 employees are, in principle, designated. At present, 4,000 are designated as "essential service." You must send them a letter within a certain period of time, and so on. At present, these 500 are not designated. During the last few weeks, even some of the prison guards who were designated as an essential service found it either too hard or too difficult, or whatever, to cross the picket lines. When picket lines were set up by blue-collar workers, a number of prison guards joined those picket lines. The result has been considerable delays, for example for the prison guards who were inside the prison being replaced by their people.

In other words, we have already had difficulties because of this and the CX union has indicated that as soon as they had the right to strike they would use it.

Senator Kinsella: I will come back to this matter with the officials later. I now have a policy question for the minister.

The Chairman: First, I wish to permit Senator Lawson to ask a few questions.

Senator Lawson: To follow what has been said already, instead of this backward piece of legislation, why not have one small piece of legislation designating the other 600 as essential services?

Mr. Massé: If you were to try to pass a piece of legislation at this point, it would be too late; they have the right to strike on Friday.

Senator Lawson: When did you discover that they were not designated essential?

Mr. Massé: The problems about the designations are still ongoing. A few weeks ago, we had an agreement about two institutions where there was a concentration of about 300 workers. At that point, it was so clear that we would have to impose back-to-work legislation right away that the union agreed to exempt those 300 guards immediately. However, they have not agreed to exempt the other 500 to 600. Although we have been continuously legislating, it has become clear that, for these, it is not the law that we must change. In fact, we must prevent those who have the right to strike now from striking. We had to use the back-to-work legislation for the 500 to 600.

Senator Lawson: You dramatize all these incidents that have taken place with rotating strikes, and so on. The negotiations are divided into two parts: prior to the settlement and after the settlement. How many rotating strikes are taking place today, after you have agreed to a settlement? Are there any?

Mr. Massé: Yesterday was the worst day of the rotating strikes.

Senator Lawson: When was the tentative settlement made?

Mr. Massé: The settlement was made the day before yesterday. The worst day of striking in the 10 weeks took place the day right after the settlement was initialled. Today, I am just being informed, all the penitentiary establishments in Quebec have been picketed. In other words, we did not get an agreement. The union refused to give us an agreement that there would be no rotating strikes after the agreement, and they have been true to their words.

Senator Lawson: You had negotiations but you could not get an agreement from the union that they would recommend a settlement. Is that what you are telling us?

Mr. Massé: No. We asked,but they refused to stop the strikes until ratification.

Senator Lawson: Has it occurred to you that that would be an easy response for the union to make in the face of this legislation that is hanging over them, which puts them down anyway.

Mr. Minister, I negotiated contracts in my career for 40 years. We never left a set of negotiations without giving a commitment that we would recommend a settlement. Almost without exception, we achieved the settlement. You are coming into negotiations and you are saying to the union, "We are negotiating in good faith to recommend and make settlements, but we just happen to have in our hip pocket the toughest piece of legislation ever created. It has never been done before, but we are dropping the hammer on you just as protection and insurance for us that you will vote correctly."

If I were part of this negotiation, I would tell you to go to hell and say to you, "How dare you challenge the integrity of the organization and not negotiate in good faith?" What you must consider, Mr. Minister, is not this settlement. You are talking about future negotiations with all departments of the government. As a long-time experienced negotiator, I can tell you that you are tearing down any hope of ever having bargaining in good faith when you say that this is how you will deal with it.

It is one thing when you do not have a settlement. However, when you have an agreed-upon settlement, how dare you strip workers of their legal right to strike when you do not need the legislation? How dare you do that and use it? If ever there were a case that cried out for no legislation, this is it.

You heard this morning that the union will recommended to their members that they accept it. You are putting future negotiations with the government at risk with this kind of tactic, to pound them into settlement merely for the comfort of knowing — in case they do not ratify it — that you can drop the hammer on then. I think you are making a serious mistake, and I say to you that you have no business bringing in this legislation now. At best, suspend the legislation pending a settlement. Wait and see if the union answers in good faith and makes a settlement and votes to ratify the settlement, and then talk about what you are going to do. They moved from the usual six or eight weeks for settlement and ratification and have said that they will do it in one week. If that is not an act of good faith, what does it take to convince you?

Suspend the legislation. Do not bring it before us. There are some circumstances in which I would support it. However, I cannot support this legislation when you have a negotiated settlement between the parties.

Mr. Massé: Mr. Chairman, there are at least 20 questions in there. The union clearly believes what we believe. The proof is that it has not prevented them from negotiating with us. We have an agreement that was initialled two days ago. The union knew what the reaction of their members would be. This is why, when we asked them if the strikes were stopped or could be stopped, they said "No." They were honest. Yesterday has proven that they were right.

In the case of the CXs, we have had an agreement that was agreed to with the negotiator and recommended by the union, but it has not be ratified. They know exactly what can happen; namely, that it may not be ratified. We need back-to-work legislation because, first, there is a transition period between the time when the agreement is initialled and the time of ratification; and, second, no one — not even the union — can be sure that it will be ratified, because in the case of one of the two unions under the bill, in one case it was not ratified.

•(1000)

The situation is clear. We do not dream in technicolour. We know the facts and the union knows the facts. We know that we must stop these strikes right now. Otherwise, there is absolutely no way of knowing that the public will be protected.

Senator Lawson: The simple answer is to then come before us and say, "We, as a government, do not agree with free collective bargaining because there are some risks, and we want insurance that there will be no such risks in the future." Come forward and strip all of the workers of their bargaining rights. At least be honest about it up front. You want to guarantee that there will not be any incidents. That is what you are doing, piece by piece.

This is not a perfect world, and that is part of the price of free collective bargaining.

The Chairman: Honourable senators, it is ten o'clock, and I am informed that the minister must leave us.

Senator Lynch-Staunton: Minister, may I ask one last question to be sure I understand you properly?

Did you say that the correctional officers' negotiating team had agreed to a settlement, that it had been sent for a vote, and it lost? Is that correct?

Mr. Massé: Yes.

Senator Lynch-Staunton: Then it went to conciliation, and you turned down the conciliation report.

Mr. Massé: Right.

Senator Lynch-Staunton: If this bill is passed, is it your intention to impose on the correctional officers the originally agreed to settlement between both negotiating teams?

Mr. Massé: If we cannot improve it by negotiation. The answer to your question is "yes."

Senator Lynch-Staunton: Then why not put that in the bill so at least correctional officers will know, as do the other affected workers, exactly what is awaiting them?

Mr. Massé: We have told them that. We have made that public.

Senator Lynch-Staunton: It is not in the bill. In the bill, you can do anything you want.

Mr. Massé: We do not want it in the bill in case the contracts we now have are successfully renegotiated.

Senator Lynch-Staunton: It could be worded in such a way that the originally agreed to settlement could be built upon. At least the affected people would know what they can get, whereas the bill tells them now that Treasury Board and the government can do anything they want. We are getting assurances, but those assurances are a long way from being written into law. I think there should be some assurances.

Mr. Massé: The fact that we gave those assurances during the debate is, I think, quite public and clear, and they indicate what we intend to do. In this case, we thought we had to leave ourselves some margin for manoeuvering.

The Chairman: Honourable senators, I know that the minister has to leave. On your behalf, I thank him for having been here this morning. We do have other witnesses.

Senator Kinsella: Mr. Chairman, I have a few questions for the officials.

Getting back to the process for designating employees in the public sector as an essential service, would you describe for honourable senators the process provided pursuant to the Public Service Staff Relations Act and other instruments? In particular, how has this applied to the correctional officers in question?

Mr. Alain Jolicoeur, Chief Human Resources Officer, Human Resources Branch, Treasury Board of Canada Secretariat: When there is a decision that an employee must be designated as essential for the operation, the process is to notify them through a formal letter of notification. That is basically the policy.

Senator Kinsella: Where is the authority to designate?

Mr. Jolicoeur: It flows from the act. If there are discussions or disagreements, the Public Service Staff Relations Board makes the decision.

Senator Kinsella: Is a list of designated employees published?

Mr. Jolicoeur: I am not aware that it is published. I am aware that both sides have a list, and the employees need to be notified by a formal letter. I am not sure if it is published. I do not think so.

Senator Kinsella: The bargaining agent will know who has been designated as essential, and the employer knows who has been designated as essential.

Mr. Jolicoeur: That is correct.

Senator Kinsella: In the process of designation, if there is a dispute between Corrections Canada and Treasury Board on the one side and the bargaining agent on the other, that matter in dispute is submitted to arbitration; is that correct?

Mr. Jolicoeur: It is submitted to the PSSRB for decision. It goes first to a designation review panel and then to the Public Service Staff Relations Board.

Senator Kinsella: Would we be correct in understanding that there is a third-party process involved in the designation as an essential service?

Mr. Jolicoeur: Yes.

Senator Kinsella: What are the numbers in the correctional officer categories for those who are not designated as an essential service and those who are designated as essential?

Mr. Jolicoeur: Although all employees would have been designated, they did not all get their designation letter in time because there is a process of time for delivering those letters. There is another series of problems, I understand, with new jobs being created. People move from one job to the other, and there is some administration involved in the designation process to ensure that all of those new jobs are properly designated and that all employees get their letter in time. There were problems with that administration, and not all of those things were done in time.

Senator Kinsella: When did the process begin? What is the nature of the public administration process to which you refer?

Mr. Jolicoeur: It has to do with the actual assurance that all of the new jobs are accepted as being designated, and also the physical process of delivering the letters to employees in time.

Senator Kinsella: When did you say the designation process began? Was it two years ago, three years ago or last week? When, *grosso modo*?

Mr. Jolicoeur: I am told the process began in early 1997.

Senator Kinsella: That is two years ago, roughly.

From the employer's standpoint, and particularly the representation of Corrections Canada, how many correctional officers does it take to secure a safe and appropriately managed corrections service?

Mr. Jolicoeur: I do not know. I do not manage Correctional Services, but I understand that all of their jobs were to be designated. That was, I believe, accepted by the other side.

Senator Kinsella: In terms of the negotiations at Table 4, were you participating at that table?

Mr. Jolicoeur: Sorry?

Senator Kinsella: The negotiations with the correctional officers was at Table 4; is that correct?

Mr. Jolicoeur: Yes.

Senator Kinsella: Were you participating at the table?

Mr. Jolicoeur: I was not at the table, but I was definitely involved in the negotiating process.

Senator Kinsella: Could you advise honourable senators what the government's or employer's final offer to this group of employees was when negotiations broke down at Table 4?

Mr. Jolicoeur: When you talk about the negotiation process, we, indeed, had an agreement with the other side at the table that basically provided for salary increases over a two-year contract of 2.5 per cent for the first year and 2 per cent for the second year, with the provision of an additional step on top of each salary range.

Senator Kinsella: What was the recommendation of the conciliation board?

•(1010)

Mr. Jolicoeur: The decision at conciliation is basically the tentative agreement that had been reached, plus four elements. To my recollection, those elements include, first, an agreement on training; second, a study on comparability between the salary of the correctional officers and the RCMP; third, an additional step at the top of each salary range, and, fourth, a removal of the bottom step.

Senator Kinsella: What is the difference between the offer at the table and the recommendation of the majority decision of the conciliation board?

Mr. Jolicoeur: In terms of payroll, the agreement that we reached at the end of the two-year period represented an increase of 7 per cent overall, while the conciliation board report implementation would represent a cost of approximately 10.5 per cent at the end of the two-year period. Therefore, the comparison stands at 7 per cent to 10.5 per cent.

Senator Kinsella: Does that mean a spread of 3 per cent of the payroll.

Mr. Jolicoeur: That is a 3 per cent spread in the payroll, yes.

Senator Kinsella: Mr. Chairman, honourable senators needed to determine the difference between the two sides. The officials have been very helpful in telling us that it stands at about 3 per cent.

My policy question relates to the question that Senator Murray was asking. That is, when the state uses its power to impose a settlement, it has the effect of impeding the exercise of a collective bargaining right. Canadian values accept that when we interfere with a right, that impedement must be minimal.

If the difference between the parties is only 3 per cent, as we are told, would it not be appropriate then to have this bill amended to recommend that the report of the majority opinion at the conciliation board constitute the agreement? What would be your reaction to that proposal?

Mr. Jolicoeur: I would like to offer a point of clarification. When we are talking about moving from 7 per cent to 10.5 per cent, we are talking about an increase in costs of 50 per cent in the bill. The difference between 7 and 10.5 per cent is 3.5 per cent and 3.5 is half of 7 per cent. Therefore, in terms of actual cost increase, the proposal of the majority of the conciliation board would represent an increase of 50 per cent.

We are basically saying that the conciliation board report, if you compare it with the previous agreement, or other agreements with other groups, means spending 50 per cent more money on that group. That is a significant difference.

Senator Kinsella: Mr. Chairman, I wish to ask questions later in relation to national rights. Perhaps other senators have questions.

Senator Murray: Mr. Jolicoeur, I heard Mr. Massé on the radio referring to a loophole that had resulted in these 500 employees not being designated. If I understood your description of the situation correctly, it really is not a loophole, as we understand the word "loophole." My interpretation of what you said is that there was some kind of administrative snafu; is that the case?

Mr. Jolicoeur: The case is that those letters were not all delivered in time. Although there is an agreement that all of those jobs should be designated, and the law would provide for that designation, there is a way for those jobs not to be designated if all of the steps are not followed properly. That is the situation in which we find ourselves.

Senator Murray: When you say the letters were not delivered in time, can you help me on that? Must a letter be sent to each employee?

Mr. Jolicoeur: I am told that the PSSRB asks the employer to deliver a letter to each of those employees so designated.

Senator Murray: I suppose a copy would be sent to their bargaining unit.

Mr. Jolicoeur: Yes, they have the list.

Senator Murray: You also said that some new jobs were created, and they somehow escaped the designation; is that the case?

Mr. Jolicoeur: From a designation perspective, the public service is a moving target. New jobs are created. There is constant organizational and structural change. There is a need to ensure that this strictly regulated process is allowed to follow with the changes that are occurring in the public service. Therefore, there are actions that must be taken when there are changes so that those lists of designated employees get updated and letters can be delivered to employees.

Senator Murray: It is the job that is designated, not the person; is that correct?

Mr. Jolicoeur: Yes, it is the position that is designated.

Senator Murray: Therefore, someone forgot or, at least, did not get around to designating a number of new positions that were created as successor positions to previous positions; is that what happened?

Mr. Jolicoeur: That is one part of the problem, yes.

Senator Murray: Who are these people, Mr. Jolicoeur? Are they what we used to call "guards," are they cooks or janitors? What are they?

Mr. Jolicoeur: Are you referring to Table 4?

Senator Murray: I am talking about the 500 who somehow escaped designation.

Mr. Jolicoeur: They are prison guards.

Senator Murray: They are all prison guards? How could those jobs have been changed; a guard is a guard, is a guard. You may call it a custodial officer now or a counsellor or something but changing the title does not change the job.

Mr. Jolicoeur: The fundamental driver in the public service is the position. Each position has a number and that becomes the basis for the process. Position A, B, C or D or position 1, 2, 3 or 5. When new positions are created or new position numbers given to existing positions, a process must be triggered for those positions to be designated.

Senator Murray: If it was decided that you needed five new guards at Joyceville or somewhere, it is possible that those five new guard positions escaped designation?

Mr. Jolicoeur: That is one case. I do not speak for the organization, and I do not know the exact details. However, it could be reorganization or creation of structure, moving one group to another. There could be any number of administrative actions that would mean the creation of new positions.

•(1020)

Senator Murray: I will not belabour the point, Mr. Chairman, but are all the positions which escaped designation those of guards?

Mr. Jolicoeur: That is my understanding.

Senator Murray: And they are spread across the country rather than being concentrated in one or other of the institutions?

Mr. Jolicoeur: Yes, at the moment they are spread across the country. As the minister indicated, we had a high concentration in two institutions, but that has been resolved with the union.

Senator Murray: Treasury Board is responsible for the Public Service Staff Relations Act. What steps are being taken to ensure that this situation does not happen again? You told us that there was an agreement between the union and the employer that all positions in Corrections Canada would be designated.

Mr. Jolicoeur: Yes, that all prison guard positions would be designated.

Senator Murray: That was the agreement, yet somehow 500 of them were not designated. I see the problems that would arise therefrom.

Whose fault is this, and what have you done to ensure that it does not happen again? There must be some changes in your administrative procedures that will be necessary.

Mr. Jolicoeur: We are discussing the process with everyone involved so that this situation does not occur again.

The Chairman: Honourable senators, the two officials from the Treasury Board were not scheduled to be here at this time. I say that only because the representatives of the union are waiting. We should take that into consideration and conclude this portion of our considerations expeditiously. We do not want to offend the representatives of the union, who were told that they would be appearing this morning.

Senator Lynch-Staunton: Are we working under a deadline? Are we expected to stop at noon? If need be, can we not continue this process in the afternoon?

Senator Carstairs: There is no constraint other than the fact that Senator Kinsella thought we could conclude by 11:15.

The Chairman: I am not suggesting that we are operating under a deadline.

Senator Lynch-Staunton: If I understand correctly, two guards could be working side by side in the same penitentiary, under the same working conditions, receiving the same pay, with one being designated and the other not. It is as ludicrous as that?

Mr. Jolicoeur: I understand that that is currently the case.

Senator Lynch-Staunton: How long has this been going on?

Mr. Jolicoeur: I do not know how long it has been going on. The administrative changes that have occurred in the last couple of years took place at different times. It was not one action but a series of actions.

Senator Lynch-Staunton: It will continue for quite some time, I gather.

[*Translation*]

Senator Lynch-Staunton: I would like an overall assessment of the government's salary policy. There is talk of increases of 2.5 per cent the first year and 2 per cent the second.

Mr. Jolicoeur: That is right, following the collective agreements, the increases are 2.5 per cent and 2 per cent.

Senator Lynch-Staunton: Is that cast in stone or is it a base that can be added to? Are there not collective agreements with salary adjustments of over 4 per cent?

Mr. Jolicoeur: There are two main differences. In certain instances, we had difficulty keeping people, and for the computer people there were additional increases. That is the biggest difference. The other major difference in numbers lies in the case of groups where an agreement was signed with the Public Service Alliance, which was covered by the pay equity complaint. This demand by the union and our agreement with these groups resulted in much larger increases.

Senator Lynch-Staunton: In the case of the Royal Canadian Mounted Police and the Canadian Armed Forces, it was announced in the budget. In other cases, there were increases greater than 2.5 per cent and 2 per cent, is that not so?

Mr. Jolicoeur: The Royal Canadian Mounted Police and the Canadian Armed Forces are not covered by collective agreements and are not employees of Treasury Board.

Senator Lynch-Staunton: Who are the negotiations conducted with, then?

Mr. Jolicoeur: It is not a bargaining process in their case. The increases are set by the government. In the case of the Armed Forces, a new balance had to be struck between them and the public service. It led to additional increases.

Senator Lynch-Staunton: To come back to the increases of 2.5 per cent and the 2 per cent, when it is all over, perhaps we will be seeing on average increases much higher than these two figures. Perhaps 3.5 per cent and 4 per cent. With all the agreements signed to date and with the enactment of this legislation, we assume it will be the end of negotiations until the others begin. What will the increase in payroll be for the two years we are talking about?

Mr. Jolicoeur: It will be just over 2.5 per cent and 2 per cent, given the exceptions made for the predominantly female groups in PSAC. As for the computer science people, it is very difficult to hang on to them and the increase will be a bit higher than 2.5 per cent and 2 per cent, given the demand for higher salary increases for women.

Senator Lynch-Staunton: My last question has a political element and, if you do not wish to reply, I will understand. The government gave its managers, its deputy ministers and so on, hefty increases of up to 20 per cent in certain cases, in addition to bonuses. What was the reason for giving this category of employees increases so much larger than those given staff at lower levels?

Mr. Jolicoeur: Thank you for asking that question because it will give me a chance to clarify matters. Over a four-year period, members of the public service's executive category received increases of 7.96 per cent, which is less than the salary increases given all the groups discussed here and much less than the salary increases already signed with PSAC. For Table 1, for example, over a two-year period, these increases will not be as high, and they will be even smaller four years from now because there will be another round of negotiations with the groups just mentioned that will take us — you will understand if I am not more specific — beyond the 7.96 per cent that members of the executive category got.

Senator Lynch-Staunton: What is this four-year period?

Mr. Jolicoeur: It began in 1997, after the freeze.

Senator Lynch-Staunton: From 1997 to 2001, and at the end of 2001, the increase over these four years is 7.96 per cent.

Mr. Jolicoeur: Yes, for members of the executive category.

Senator Lynch-Staunton: The unions will use this argument. The response can be that their increases during this same period of time, if they are all approved, will exceed 7.96 per cent.

Mr. Jolicoeur: In certain cases, they will already have exceeded this after two years. They will quickly put the increase of certain members of the executive category into perspective. We gave you the average increase for members of the executive category, for cadres.

[*English*]

Senator Lynch-Staunton: What do you consider "cadre"? How far down does it go, or from where does it go up?

[*Translation*]

M. Jolicoeur: The 7.96 per cent figure includes positions at the EX-1 level. In general, the director level varies from one organization to another, and can go up to the DM-3 level, which is the highest deputy minister level in the public service.

Senator Lynch-Staunton: There are deputy ministers, and associate deputy ministers, or there used to be.

Mr. Jolicoeur: There are three deputy minister levels, and then there are the associate deputy ministers, which are EX-4 or EX-5, followed by the directors general, at EX-2 or EX-3, and the directors, who are generally EX-1. Over four years, total increases for them all gives us 7.96 per cent.

Senator Lynch-Staunton: How many are in this executive category?

Mr. Jolicoeur: Between 3,000 and 3,500**.**

[*English*]

•(1030)

Senator Forrestall: While I do not know where to find this wording in the bill, I understand that its purposes are to require a return to work and to ensure that there shall be no withdrawal of services for any reason. Is that correct, more or less?

Mr. Pierre Hamel, General Counsel, Treasury Board Secretariat, Legal Services, Department of Justice: Could the honourable senator repeat the question? I did not understand it.

Senator Forrestall: I do not know specifically where to find this in Bill C-76 but it is my understanding that the bill requires a return to work and bans completely any withdrawal of services, under certain conditions and until certain other things have happened. Is that correct?

Mr. Hamel: The two parts of the bill are very similar, one to the other, and prescribe an immediate return to work and immediate maintenance of services. In respect of Part 2, for the Correctional Services officers, the coming into force of that part is not immediate on the passage of the bill, but is on proclamation by Order in Council. Part 1 would come into force 12 hours after the bill is given Royal Assent, and that applies to the blue-collar groups. Part 2 comes into force only on proclamation by order of the Governor in Council. What comes into force, therefore, are the provisions, if we take Part 2 of the bill, for example, that are set out in clauses 16, 17, 18, and following.

Senator Forrestall: I have been through all of that. That does not mean very much because, if you miss an "and" or a comma, you have lost the whole sense of it. What I am concerned about is the situation that arises where competent authorities within the bargaining agencies determine that a workplace is not safe. What protection is there for the men and women who withdraw their services under that kind of a directive? Is there provision in here to allow people to walk away from work if it is not safe?

Mr. Hamel: There are provisions in the Canada Labour Code which deal with health and safety and which apply to the public service, and they are not replaced by the provisions of this bill.

Senator Forrestall: This bill does not supersede those provisions?

Mr. Hamel: No.

The Chairman: I would just like to remind honourable senators that we have witnesses waiting from the Public Service Alliance of Canada.

Senator Kinsella: Mr. Chairman, I should like to make two comments. First, we are not too far off schedule. However, we have all learned that we do not operate this place on the basis of exact science. In terms of prediction, it is usually my principle to speak as a historian rather than a prophet. That having been said, I do not think we will be too far off.

I wish to get some comments from you on the issue of national rates, the issue that relates principally to the so-called blue-collar workers in Part 1 of the bill. It is my understanding — please correct me if I am wrong — that the tentative agreement will reduce the number of rates across Canada from 10 to seven. Is that correct?

Mr. Jolicoeur: We are moving to seven.

Senator Kinsella: It is my understanding that the bargaining agent at the table was seeking to have just one national rate. Is that correct?

Mr. Jolicoeur: Yes. We have now reached a tentative deal for seven zones but they were aiming, at the beginning of the process, to have only one.

Senator Kinsella: It is therefore the government's view that there should be different rates across Canada for blue-collar workers. Why, in your view, would this only apply to blue-collar workers? Why would you have variable rates across Canada for blue-collar workers working for the Government of Canada, depending on where they work, when that is not the situation for those who are not blue-collar workers?

Mr. Jolicoeur: Speaking as an official, I believe that there is a need for more regional adjustment than we have right now. I do not know what the policy of the government will be. However, at the moment, the policy is that we need those regional rates. As you may be aware, we have had to make other regional adjustments for other groups, such as very recently for the RCMP out west. We have done that for the lawyers in Toronto. It may very well be in the future that there will be a need for other regional adjustments.

People are very quick to say that there is a need to increase the salary allocation in some regions because the cost of living is higher, but once they have done it, they are quick to point out that it is unfair because it has not been given to those where the cost of living is lower. There is a policy decision to be made here. Everyone is in favour of paying more when there is a need for more, but they do not agree with paying less when there is a need for less. There will be a need to study that in the coming years.

The Chairman: Honourable senators, I believe that our witnesses are finished. We thank them for appearing and for staying on to answer questions.

With that, I would ask for the next witnesses, Mr. Daryl Bean and Ms Nycole Turmel.

Pursuant to Order of the Senate, Mr. Daryl T. Bean and Ms Nycole Turmel of the Public Service Alliance of Canada were escorted to seats in the Senate chamber.

The Chairman: I am told, Mr. Bean, that you will be making a statement. Please proceed.

Mr. Daryl T. Bean, National President, Public Service Alliance of Canada: Mr. Chairman, senators, first I wish to express our appreciation to honourable senators for this opportunity to appear before you. I certainly wish we were doing it under different circumstances. I believe this is my third occasion to make a presentation of this nature.

We will have a short statement which will be shared between myself and Ms Turmel, our National Executive Vice-President.

•(1040)

Shortly after 11:30 p.m. two nights ago, Treasury Board President Marcel Massé started parliamentary debate on Bill C-76, to provide for the resumption and continuation of government services, by saying something to the effect that the agreement reached between the alliance and Treasury Board a few hours earlier proved Treasury Board's respect for, and commitment to, free collective bargaining. I wish to assure the honourable senators that it does no such thing.

While an agreement was reached at the eleventh hour between the alliance and Treasury Board covering 14,545 blue-collar PSAC members, it was the eleventh hour of an exceedingly Draconian legislative process, and not the eleventh hour of negotiations. During this round of negotiations between Treasury Board and the PSAC, the Table 2 negotiating team met.

Treasury Board has consistently refused to take the legitimate aspirations of our members seriously. Despite compelling evidence showing a serious and widening wage gap between our blue-collar workers and people doing identical work in the private sector, Treasury Board appeared before an independent conciliation board and tabled wage increases of 2 per cent and 2 per cent over two years.

In January of this year, PSAC blue-collar workers said, "Enough is enough," and launched a legal strike in an effort to convince Treasury Board to take their issues seriously. After nine full weeks on the picket line, the government introduced back-to-work legislation that would have imposed terms and conditions that were far worse than the inadequate proposals it had tabled with our negotiating team less than two weeks ago.

Understandably, facing the imposition of a package of woefully inadequate terms and conditions of employment, our negotiating team had to consider the government's eleventh-hour proposals and has agreed to recommend the package to our striking blue-collar workers.

Honourable senators and all Canadians should understand that while this chain of events will result, if ratified, in a collective agreement rather than legislatively imposed terms and conditions of employment, it is a fundamental distortion of the concept of free collective bargaining.

By definition, free collective bargaining can never include legislatively imposed terms and conditions of employment or the threat of legislated wages and working conditions. By definition, free collective bargaining can never exist when a government can use its majority to dictate — as it has tried to do in this case — the duration of the contract.

While the powers of employers exceed that of workers in nearly every negotiation process, the ability of government employees to legislate is an affront to any notion of free collective bargaining. PSAC members employed by the Government of Canada — general labour and trades, general services, hospital services, ships crews, heating and power, lightkeepers and firefighters — understand this only too well. For 14 long years, the bargaining relationship between the alliance and Treasury Board for the workers represented at Table 2 has been frustrated by government interventions that have been designed to control, restrain and freeze wages, erode employment security and, yes, even renege on signing collective agreements.

Two groups, namely the ships crews and hospital service workers, last negotiated a collective agreement in 1985, some 14 years ago. When these agreements expired in December 1987, a decade of legislated interventions began with the Government Services Resumption Act in 1989. There were six — let me repeat that: six — separate legislated collective agreements, collective agreement extensions and legislated provisions overriding parts of the collective agreement for these groups and all alliance members that followed. Is it any wonder that public service workers are frustrated and angry?

While we could spend a considerable amount of time revisiting this sorry record, PSAC members from both the blue collar and correctional groups want you to hear their anger, their contempt and their frustration with the government's negotiating position and its ultimate recourse to punitive and highly offensive Bill C-76. Those senators and, indeed, all Canadians interested in the legislated assault on federal public service workers can review our comments on Bill C-49, the legislation that ended the 1989 hospital service and ships crews strike; and on Bill C-29, the legislation that ended the PSAC general strike in 1991.

To hear the President of the Treasury Board talk, the Table 2 strike created an unprecedented national emergency. During last Thursday evening's emergency debate on the movement of grain, the minister accused alliance strikers of holding, "Farmers hostage in the western provinces, taxpayers hostage in the case of Revenue Canada, and travellers hostage at Dorval airport." I might ask: Who is being held hostage? In an appalling display of arrogance and insensitivity, the minister used the word "hostage" six times in an attempt to cloud the issue and lay blame on PSAC members, who are amongst the lowest paid workers in the federal public service.

During the debate in the House of Commons on Bill C-76, I heard a number of members utter the word "shame" when the minister attempted to defend his government and his personal involvement in the events that led to his government's legislative assault on PSAC members. I also say, "Shame." Shame on the minister 14,545 times — on behalf of each and every blue-collar worker represented by the PSAC! I say "Shame," again, on behalf of the 4,700 correctional service officers. Shame for your failure to negotiate in good faith over the past two years; shame for introducing back-to-work legislation for our Table 2 members; shame for introducing pre-emptive back-to-work legislation for our Table 4 members; shame for the minister's, and his government's, inability and unwillingness to comprehend the working conditions that our members endure on a daily basis; and shame for his complete disregard for the statistical data showing an alarming wage gap between our blue-collar and correctional service workers and their counterparts in the public and private sector across Canada.

•(1050)

On the record, I wish to go further and question the integrity of the President of Treasury Board. I do not do this lightly, but the fact is that the minister has provided information to the public and to Parliament throughout the current round of PSAC negotiations that is, at best, designed to mislead.

Consider the following: The minister has maintained, and continues to maintain, that his government has established a 2.5 per cent and 2 per cent wage-increase pattern; that it has negotiated with the overwhelming majority of federal public-sector workers, including more than 100,000 PSAC members.

The President of the Treasury Board knows that that is not true. He knows, for example, that the settlement on behalf of the 90,000 PSAC members in the program and administration group included a special pay adjustment.

Honourable senators, if there was any doubt about him knowing, I refer you to a Treasury Board Web site printout, entitled "Setting the Record Straight — PSAC Negotiations."

This document shows that in fact the vast majority of workers in that group received between 10 and 20 per cent overall, not 2.5 per cent and 2 per cent.

The President of the Treasury Board must surely know as well that our negotiators arrived at a negotiated settlement for 10,000 members of the general technical group that included a pay increment of 4 per cent in addition to the 2 per cent and 2 per cent wage increases. It did not say 2.5 per cent and 2 per cent, but 2, 2 per cent and 4 per cent.

It does not end there. There are other examples in the unionized federal public service. Senior public service executives received 4 per cent to 19.35 per cent increases. Members of the RCMP, judges, military personnel, all received compensation, courtesy of the President of the Treasury Board, that exceeds 2.5 per cent and 2 per cent and, in the majority of cases, many times that amount.

The President of the Treasury Board's misrepresentations when it comes to wage settlements are bad enough; however, they pale when compared to his distortion of the PSAC Table 2 strike and the entirely suspect and untested assertions with regard to the impending Table 4 strike.

[*Translation*]

Ms Nycole Turmel, National Executive Vice-President, Public Service Alliance of Canada: Honourable senators and all Canadians need to understand the fact that 728 Correctional Service workers will be in a legal strike position as of one minute past midnight on March 26, 1999. This fact is a result of a conscious and voluntary decision of his government and not a result of some inexplicable "administrative error."

You heard me right. I said conscious and voluntary decision.

While administrative errors and incompetence resulted in a large number of Correctional Officer positions not being properly designated, the government pre-empted a Public Service Staff Relations Board hearing scheduled for this week to determine whether these positions would be designated or not by inviting the Alliance to negotiate an agreed-upon list of designated and non-designated positions. During this process, Treasury Board agreed to a list of 728 positions that would not be designated.

Let me make this perfectly clear, 728 non-designated positions.

Why did the government do this? Unless the government was deliberately engaged in bad faith bargaining, when it voluntarily agreed to a substantial list of non-designated CX positions, it had to have concluded that a strike that included 728 non-designated positions would not adversely affect the safety and security of Correctional Service Officers, inmates within federal penitentiaries or the Canadian public.

How then can the President of the Treasury Board explain the statement in his news release dated March 24? And I quote:

> Moreover, Correctional Officers have yet to reach a collective agreement and will be in a legal strike position as of March 26. Work action by Correctional Officers has the potential to seriously affect the safety and security of those working and living in correctional institutions as well as all Canadians.

How can he explain his repeated comments during House debate on Bill C-76 to the effect that a Correctional Officers' strike was an emergency waiting to happen?

How indeed other than admit that the negotiation process he initiated on behalf of his government was a fraud?

How indeed other than to admit that the signature of his legal counsel — approved at the most senior levels of Treasury Board — was worthless?

How indeed other than to admit that he was prepared to negotiate and sign anything because he knew that he could use procedural motions and his government's majority in the House of Commons and the Senate to nullify his agreement prior to legal strike action?

I have in my hands the list of 728 non-designated Correctional Officer names and position numbers, and I challenge the minister to write each one of them and explain how he could, in good conscience, remove their fundamental right to strike in such a capricious and cavalier way.

I would like the President of the Treasury Board to explain, as well, what his actions with regard to designations of the CX Group, and particularly his pre-emptive back-to-work legislation, mean for the future.

As many senators know only too well, government workers who are denied the right to strike by legislation have access to binding arbitration, a third-party process designed to provide a measure of impartiality and fairness to groups of workers who are unable under law to exercise the fundamental right to strike.

During this round of negotiations, the government, on the recommendation of the Treasury Board, suspended the arbitration route for most public sector workers, including the CX group and they are intent on doing it again for the upcoming bargaining round.

The Treasury Board President's actions indicate that he, his government and a majority of the current Parliament are unwilling to allow even a limited strike by correctional service officers. That being the case, he and his government must surely acknowledge that a third-party process is the only fair way to resolve the current dispute.

And, as luck would have it, the majority of an independent panel — a conciliation board — established by the Public Service Staff Relations Board that heard both the union and the employer positions in early March 1999 exists and it found the union position on the main issues in dispute to be the most compelling.

In fact, the majority report drafted by Paul G. Gardener, the independent chairperson, and concurred in by PSAC representative Renaud Paquet, calls for one additional increment step in each year of a two-year agreement, in addition to a general economic increase of 2.5 per cent and 2 per cent over the two years.

It needs to be underscored, here, that while the PSAC Table 4 negotiating team unanimously accepted the terms and conditions of employment as outlined in the conciliation board report, the economic increases fall short of what is required to achieve parity with RCMP officers. But again, the majority conciliation board report partially addressed this issue when it recommended that a joint union-management committee be established to "compare the duties, working conditions and wage rates of persons employed in this bargaining unit and those of uniformed RCMP officers and correctional officers in provincial jurisdictions."

Despite being hell-bent on denying correctional service officers the right to strike, as a way of resolving the current impasse, Treasury Board has yet to agree to implement the majority conciliation board decision, and voted against amendments to Bill C-76 to that effect.

In fact, the government's approach to terms and conditions of employment at Table 2 and Table 4, as reflected in Bill C-76, is completely different. In the case of Table 2, a complete package outlining terms and conditions of employment, was released in conjunction with Bill C-76. This package was subsequently improved and will be submitted to our Table 2 membership for their consideration.

In the case of Table 4, the government has yet to present any substantive indication as to terms and conditions of employment that it is intent on imposing, other than a few rhetorical observations from the President of the Treasury Board that he will impose terms and conditions of a tentative agreement that was rejected in January 1999 along with an unspecified part of the conciliation board report.

Honourable senators should understand that if this is the government's true position, it is not only an insult to the majority of correctional service officers who voted to reject the tentative agreement, but an affront to the negotiating team and everyone who believes in democratic decision processes.

To be clear, notwithstanding the President of the Treasury Board's perception, the negotiating team recommended acceptance of the tentative agreement, because it believed that the package, while economically inadequate, was better than taking its chances at a third party.

This decision is easily understood given that the three members of the Table 2 conciliation board had just rendered individual reports, none of which could form the basis for settlement — what was, in effect, a no-board report at Table 2 had a chilling effect on the Table 4 negotiating team, precisely because both groups had good wage data and comparisons with the outside sector. And both groups had been subjected to nothing but frustration in their attempt to resolve the issues during face-to-face negotiations.

As well, while the President of the Treasury Board can claim that his government's failed attempt to introduce Bill C-76 on the same day, Friday, March 19, that the Table 4 conciliation board report was released, was a coincidence, such a claim would stretch credibility beyond the breaking point.

The reality is that the Treasury Board would have had advance notification of the contents of the report prior to its release and that Treasury Board officials would have advised the minister. That being the case, the government's actions in drafting and introducing Bill C-76 are also an affront to the independent conciliation board and to the Public Service Staff Relations Board itself.

[*English*]

Mr. Bean: The irrefutable point is that the government's and the Treasury Board President's chief spokesperson on collective bargaining have spent two years ignoring the legitimate wage demands of some 4,700 correctional service officers. He has ignored reasoned and researched arguments from the Table 4 negotiating team. He has ignored individual members who have written, e-mailed, and faxed him. He has ignored information, picket lines and large demonstrations organized by the PSAC and its component the Union of Solicitor General Employees, its locals and individual members. By introducing Bill C-76, he has consciously ignored the independent advice of a majority conciliation board that considered both positions and found the union's position more credible.

Before closing, I wish to put squarely on the record the fact that the final difference between the union and employer's position on the negotiating table for Table 2 was 3.1 per cent, while the difference between the rejected tentative agreement and the majority conciliation board report at Table 4 was 4 per cent for the correctional officers. I heard the comments earlier about 3.5 per cent of payroll, and that may be right. In the scheme of the government's overall payroll, these amounts are relatively small. Moreover, they are the minimum necessary to reverse the ever-widening wage gap between these workers and their private sector counterparts.

The government's intransigence at the negotiating table, at the independent conciliation board process and during this legislative process is difficult to understand and begs the question, why legislate? Why legislate terms and conditions of employment? Why legislate duration? In the current context, fiscal responsibility cannot answer these questions, nor can any notion of constructive union management relations. The only motivation, and the true answer, according to the 21,000 PSAC members represented on Tables 2 and 4, is that the government is once again being punitive.

Here again, Bill C-76 proves this point. Since 1991, the PSAC and the entire labour movement have grown accustomed to ever-more-frequent back-to-work legislation with penalties designed to break the union. If the non-designated employees at Table 2 and 4 were fined as per the provisions of Bill C-76, the union and its members would be liable for more than $10 million per day. Worse still, Bill C-76 allows the government to collect significant fines out of membership dues.

Bill C-76 also obligates the union and each of its officers and representatives of the bargaining agent to notify employees that any declaration, authorization or direction to go on strike given to them before the coming into force of this part is invalid. In other words, the government is directing us as officers individually and as a union to advise our members that the notification we gave them authorizing their strike action is invalid. They had the right to strike, and they exercised that right. It is not invalid. This is not only offensive but would appear, certainly on the face of it, to be a violation of the Charter. If necessary, we will certainly take that one on, too.

Senator Lynch-Staunton: Mr. Bean, welcome, and thank you for your very forceful presentation. Mr. Bean, listening to your forceful voice and strong convictions reminded me that the last time I listened to you was eight or nine years ago when you and 20,000 of your closest friends came in front of this building to say some unkind words about a certain piece of legislation which our government was then sponsoring. Now we find ourselves not much further ahead, I gather, in relations between the government and its employees, as expressed by your frustration today.

•(1110)

No matter what government is in power, back-to-work legislation is simply bad legislation. It confirms, once again, that there is a breakdown somewhere along the line in the normal bargaining process that convinces the employer, which has a big stick, to come to Parliament and ask for the withdrawal of the fundamental right of its employees. That is not a discussion for today, though it is in the back of my mind, certainly.

What strikes me about your joint presentation is that the interpretation of certain events you have given is diametrically opposed to the interpretation given by the minister and his officials only one hour ago. I would hope that before we are through, we can have some reconciliation between the two or perhaps a closer meeting of the minds. If negotiations continue on the basis where one says that is black and the other says that is white, an impasse is inevitable.

As for the bill itself, there is, at present, a tentative settlement that you will take to your members for vote on April 6, I believe; is that correct?

Mr. Bean: Yes, there is a tentative settlement for Table 2, the blue-collar workers, which we will be taking to our membership. We have had some trouble getting the finalized wage rates because it involves some 30 pages of wage rates. Obviously, we cannot ask our members to vote without showing them the wage rates. As of late yesterday, we have been waiting for those 30 pages of wage rates. As soon as we receive them, we will be printing them with a covering document and going out to our membership for a vote.

We had hoped that we could complete that next week. This delay in getting the documents may mean that we cannot complete it next week.

I heard a question about suspending the legislation and not implementing it. If it were to be suspended, we would speed up the vote. We probably could not complete it next week, but very early the following week. The Easter weekend creates a problem. If it is not to be suspended, then we will take probably an extra week to do the ratification. We could speed it up if the legislation was suspended.

Senator Lynch-Staunton: You will be recommending to your members that they approve this tentative settlement. Can you tell us what you know of the tentative settlement and how it compares with the imposed settlement that is before us? Do any features of one make it better than the other, or is it a mix?

Mr. Bean: The tentative agreement is substantially better than the imposed legislation or the legislatively imposed terms and conditions. The tentative agreement calls for a 2.75 per cent increase in 1997, a 2 per cent increase in 1998, and a 5 cent per hour increase February 4, 1999.

The major change in the position of Treasury Board is in the realignment of the zones and the elimination of three zones. Treasury Board wanted to eliminate a zone that changed nothing because the zone rates are all the same. On paper it would look like the elimination of a zone, but in fact it is nothing.

They also wanted to lump Saskatchewan in with Atlantic Canada. That does not make much sense to us, as there seems to be some spread in the geographic area between Saskatchewan and Atlantic Canada.

The change we were able to negotiate is that Atlantic Canada would roll in with Quebec and that the three Prairie provinces would be rolled together, with one small exception: Banff National Park would be rolled into B.C. The situation was so ridiculous that in some cases the same workers worked one day in B.C. and received one rate of pay, and the next day worked in Alberta and receive another rate of pay. Finally, we have been able to correct that situation. That is why the tentative agreement is much superior to the legislated agreement.

Senator Lynch-Staunton: When you say the tentative settlement is substantially better than the imposed settlement, one can only assume that faced with two, the worker would take the one you will take to them for a vote. One wonders why we have to carry through with this legislation when the imposition hardly seems necessary.

When we get away from the argument regarding the rights of the worker and the arrogance of the employer, what supports this legislation is the fact that the rotating strikes, legal as they may be, have led to some very unpleasant situations. Yesterday, once again, access to Dorval airport was stopped long enough so that people missed their planes. I am talking about situations with which I am personally familiar. Traffic in downtown Montreal was shut down at the peak hours in the morning. I am aware of the Halifax airport being disrupted. I can understand the frustration of the workers, but they are not helping us in appreciating their problem when they indulge in these excesses, with damage to property and damage to persons. The police must intervene. This, unfortunately, is colouring the whole debate and is putting pressure on Parliament, in order to end these excesses, to pass a bad law. If there were no excesses or limited excesses, I would hope the government would be a little more patient and withhold this legislation. However, the minister responsible for the Treasury Board told us this morning that the rotating strikes and their fallout were more pronounced yesterday than they have ever been. This revelation came after the announcement of a negotiated settlement.

I can sympathize with the minister's argument. I would like you to contradict it if you can, and I know it is impossible to guarantee that all employees will stick to the straight and narrow.

When the minister says that there is no guarantee that this settlement will be passed, that is not as good an argument as the next one. If we suspend the act, there is no guarantee that these excesses will not continue. I would like your comment or that of Ms Turmel on that point.

Mr. Bean: We have already agreed that we will not picket the grain outlets any more so that grain shipments can continue.

It was our intention from the start to inconvenience the Canadian public, the farmers and others as little as possible. That is why we conducted a rotating strike. Had we obviously chosen otherwise, we would have conducted the activities on an ongoing basis, rather than on a rotating and ad hoc basis.

By exercising the right to strike in that manner, we had hoped that we could force the government to negotiate, not legislate. We have had enough experience with legislated agreements. It is unfortunate that in some cases, such as Dorval on two occasions in 10 weeks — which I do not think is excessive — individuals have been inconvenienced. The reality is that if you conducted a strike and no one was inconvenienced or affected, you would be on strike forever. Why would the employer ever talk to you again?

•(1120)

Yes, we had to cause some minimum inconveniences. I know that individuals trying to catch a plane may not think the inconvenience was minimal, but many other strikes, and not always by our membership, have caused people to miss planes.

Senators should understand that there is a very high frustration level, and legitimately so. I am expressing only a small amount of it. Some of you may find my words offensive, and I apologize if you do. However, I am expressing only a small amount of the frustration that exists. Put yourselves in the position of the lowest-paid workers in the federal public service, who have not had a negotiated collective agreement since 1989. Two groups, ship crews and hospital services, have not had a negotiated collective agreement since 1985. They had one imposed by arbitration and one denied while they were on strike in 1991. They have been almost two years at the negotiating table. I cannot imagine that any of you in this house would not be frustrated if you were in that position.

When you make your decision here today, think about workers who have gone for as long as 14 years without a negotiated collective agreement, as well as going a minimum of six years with no pay raise. I believe that that would upset you, too.

Senator Lynch-Staunton: I appreciate all of that, Mr. Bean, and I believe that the other members in this chamber and the Canadian people do as well, although many other Canadians have also suffered a wage freeze.

However, I do not see why that frustration must be expressed at the expense of innocent bystanders. Your dispute is with the Government of Canada. If you want to shut down Revenue Canada by peaceful and legal means, that is fine. However, when your members engage in vandalism and unwelcome demonstrations that entail confrontations with the police, the tenor of the debate is coloured. I am quite sure that if this law is not passed there will be a wave of protestation across the country, although obviously for the wrong reason, that being the excessive disruptions.

Senator Carstairs: Mr. Bean, you said that it was not the intention of PSAC to hurt the grain farmers of Western Canada. Yet, your institutions issued a bulletin on March 12 that said, in effect, that you were going to stop the flow of every kernel of grain in Western Canada. If that were not designed to hurt the grain farmers of Western Canada, what was it designed to do? There are only 70 grain weighers among your 14,500 employees. Why would you target that group?

Speaking of wage increases, when was the last time the farmers of this country received a wage increase? Why did you specifically target these people?

Mr. Bean: First, I have no idea from where you got that statement. It is certainly not one I made. I do not apologize for the fact that I did indicate that on occasion we would picket grain establishments. As anyone who has been involved in labour relations would know, if you conduct a strike and do not put pressure on anyone, you will never end the strike. Yes, on occasion we did target grain and did slow down shipments. I do not apologize for that. We kept that to the minimum possible while still attracting the attention of the government.

Senator Murray: I have a couple of questions about the correctional service workers who ended up being non-designated. Did either of you hear the discussion we had with the President of the Treasury Board and officials earlier today?

Mr. Bean: Yes, I did.

Senator Murray: The discussion was largely with the officials, as you will recall.

There is a discrepancy between what we were told by the officials and what you have told us today that goes far beyond a difference of opinion or even a difference of interpretation of the same facts. There is a wide discrepancy, and I wish to flag it right now for the benefit of the Leader of the Government in the Senate. In due course, we will rise for lunch, after which we will return here, either to resume as a committee or to proceed to third reading debate. That is not in my hands. However, unless we can obtain some satisfactory clarification with the witnesses, I suggest in the strongest possible terms to the government that the officials return here at two o'clock with a statement explaining the contradiction between what they told us and what we are now being told by the union representatives.

Although I do not wish to make too much of it, we were told by the officials that 500 to 600 employees are not designated. I see the number 728 on page 4 of the document before me. What is the correct number?

Mr. Bean: There are 728 who are not designated. We have the list with the positions.

Senator Murray: Is this the same group of people that we were talking about with the officials earlier today?

Mr. Bean: Yes, and this is an agreement that Treasury Board signed just a few days ago. This agreement calls into question the validity of them signing an agreement on one day, saying that 728 positions are not designated, and then the next day saying that they will not be allowed to strike.

I wish to explain briefly the designation process in the federal government. That process has continuously resulted in more positions being designated than there are people. In Correctional Services, as high as 116 per cent have been designated. That is, of course, because some positions are vacant. If a position is vacant, how can it possibly be essential for the safety and security of the public?

•(1130)

Senator Murray: I was given to understand this morning — and I hope I did not misunderstand — that there was a general agreement that all of the guard positions at Corrections Canada were to be designated by agreement. Is there such an agreement with you or with the bargaining agent?

Mr. Bean: When the review was done in 1997, there was an agreement, based on the positions at that time, which would have resulted in ninety-some per cent, not all of them, being designated.

Senator Murray: The guards?

Mr. Bean: Correctional officers, yes. Subsequently, three things occurred. First, some administrative functions changed, some positions were changed to another position, and some of those were missed. Second, Correctional Services Canada, in a number of cases, forgot to provide the form 13, which is a Public Service Staff Relations Board form, to the designated workers. Third, there were some new positions created which were not included. That is how we ended up with 728 positions which are not designated.

Senator Murray: That is consistent with what the officials told us. The minister talked about a loophole. The officials described something that I would describe as an administrative snafu. What you have said so far is consistent with what we were told. They missed those. You say it adds up to 728 positions.

Mr. Bean: Correct.

Senator Murray: Then you say that they will be in a legal strike position as of one minute past midnight, and you say this fact is a result of conscious and voluntary decision of the government and not as result of some inexplicable administrative error?

Mr. Bean: What I am referring to there is that, on March 22 or 23, Treasury Board's legal counsel signed a document allowing for 728 non-designated correctional positions.

Since I believe we are supposed to be careful with the words we use in Parliament, I will just say that I find it less than honest when on one day you sign a document saying you can live with 728 people not being designated and still provide the necessary services, and then the next day claim through legislation that there will be a catastrophe if these 728 do not show up to work. There is something wrong when such a position is put forward. I will let you decide what is wrong when one can sign an agreement on one day and then claim legislatively on the next day that it will cause a tremendous problem.

I can tell you from my point of view what I believe the government feels is the tremendous problem. It is that they may have to pay some overtime to some other correctional officers who will have to stay at work longer. The problem is not that the penitentiaries will not have correctional officers available. It is not that there will be a riot because 728 people are not designated. The real problem for the government is that it will cost them some money, called overtime. That is the real reason for that provision.

Senator Murray: Are you taking this case to the Public Service Staff Relations Board? You say that the government pre-empted a Public Service Staff Relations Board hearing scheduled for this week to determine whether or not these positions would be designated by inviting the alliance to negotiate an agreed-upon list of designated and non-designated positions. You also say that, during this process, Treasury Board agreed to a list of 728 positions that would not be designated.

Who arranged the Public Service Staff Relations Board hearing on the matter? Was this at your initiative or the government's?

Mr. Bean: Both. We had requested a hearing and so had Treasury Board. What has happened since then is that an agreement was reached between the two parties, and the Public Service Staff Relations Board has accepted the agreement as valid and is not questioning the non-designation of those 728 members. We both had a complaint, for different reasons.

Senator Murray: The non-designation, though, was to last, if I understand this correctly, until there was a determination by the Public Service Staff Relations Board. Is that correct?

Mr. Bean: The Public Service Staff Relations Board has endorsed this agreement between the parties. They are satisfied that it meets the contents of the law and have accepted that there are 728 people not designated.

Senator Murray: And that they need not be designated?

Mr. Bean: That is correct.

Senator Murray: Is that your position?

Mr. Bean: That is our position, yes. As I pointed out, we have traditionally had more positions designated than there are people, so obviously something is wrong with the system. We have been saying that for years. If a position is vacant, then it obviously cannot be essential. We have had positions in other groups declared to be essential for the safety and security of the public on one day, yet the individual will get a layoff notice the next day. Something is wrong with this system.

Everyone has agreed — the union, Treasury Board and the Public Service Staff Relations Board — that these 728 positions do not need to be designated. There is no doubt as to what it means. The service will be provided by the correctional officers. However, it may require — and I emphasize "may" — some overtime.

Senator Murray: Apart from the dynamic of the negotiations that are taking place now and the relationship between the unions and the employer, this would seem to result in the situation that was described earlier this morning, in which one correctional officer would be designated and the person working right next to him would not be designated. In the long term, in principle, correctional officers ought to be either designated or not. Would you not say so?

Mr. Bean: No. I would suggest to you that it is not essential that everyone be designated. With respect to the Table 2 workers, while I am not sure of the figure, somewhere around 40 to 50 per cent of them are designated. It may mean that, in one establishment, they have designated one plumber or one carpenter for emergency services but do not need five plumbers or five carpenters. The same can be true for the correctional officers. They can still maintain service.

Senator Murray: So a sufficient number of them should be designated to protect the safety and security of the public interest?

Mr. Bean: That is correct. I would agree with you that there is something wrong with the process. I think you could all sit here and ask how a position can be essential for the safety and security of the public if there is no one in it. There are about 100 positions in the original group which have no one filling them.

Senator Murray: That satisfies my concerns about the discrepancy. The facts that Mr. Bean has given us are not inconsistent with what we have heard. I believe that what has happened, as sometimes does happen, is that there are quite a few facts that we did not get this morning.

Mr. Bean: Mr. Chairman, I wish to add one thing. We were talking about 1989 earlier.

•(1140)

In 1989, the government made a major mistake in not designating a number of positions, including no one from the ships' crews. Our union, in that 1989 strike, paid per diems and hotel stays for ships' crew members so they could go out and do search and rescue activities, although legally we were not required to do so. The reality is that our members take their jobs pretty seriously. If they are going out to do search and rescue today because they are not in a strike position, tomorrow because they are in a strike position, they will not sit there and let four or five people drown. They do go out. We spent $400,000 of membership money to maintain essential services, although, legally, there was no requirement.

I want to emphasize that this is not a union that simply takes advantage of all the loopholes or administrative errors. We are still concerned about the safety and security of the public, and we will continue to be concerned.

The Chairman: I wish to remind everyone that we will hear from Viviane Mathieu of the Union of the Solicitor General Employees when the present witnesses have ended their presentation.

Senator Lawson: Mr. Bean, can you help me with my understanding of collective bargaining, as I knew it and understood it before? We heard the minister complaining vigorously about your rotating strikes and the damage and the inconvenience caused. Some of the questions suggested a concern about the inconvenience and damage being done through vandalism and so on.

I get the impression that you are being told that you have the legal right to strike with two pre-conditions: first, that you do not exercise it, and second, that, if you do, you are not to inconvenience anyone.

That leads me to my key question. When Parliament gave you bargaining rights and the right to strike, they gave you the right, on this dispute, to pull out 14,500 public servants. Why did you not act in a modest fashion and just limit yourself to pulling out the 14,500 public servants?

Mr. Bean: I certainly agree with your first summation. We have the right to strike as long as we do not exercise it or, if we do exercise it, we should not inconvenience anyone. There are not 14,000 members who have the right to strike because in the Table 2 group — this is different from the legislation that you are used to working with — there are designations for the safety and security of the public. I do not remember the exact figure, and I do not want to mislead you, but some 7,000 members did not have the right to strike and have not exercised the right to strike.

We did not pull out the approximately 7,000 workers who do have the ability to strike because we knew that, if we did, this government would legislate them back to work. We attempted to put pressure on the government while limiting the inconvenience to the Canadian public and to the farmers. We do not deny we caused some inconvenience and that some farmers lost some money. I will apologize to the farmers who are losing money; I will not apologize for exercising our right to strike in a way that could get the government's attention. We had hoped that use of rotating and targeted strikes would cause the government to seriously negotiate.

Senator Lawson: The minister said that yesterday was the worst day yet. What is the total number of workers who were out on strike yesterday or on any given day?

Mr. Bean: I do not believe we have exceeded 4,000 workers on any given day. At this time, I cannot tell you specifically how many were out yesterday, but it did not exceed 4,000 workers.

Senator Lawson: It seems that, on the face of it, the union acted responsibly and with some concern for the inconvenience you were creating for others. I congratulate you for that. I am the one who raised the issue of suspending the legislation, because I have great difficulty with it.

During debate in the House the other night, when they were discussing these crippling strikes and injury-causing actions, Minister Massé popped up and said that the strike was neither crippling nor intractable. He is quoted as saying that the government's call to reason had been heard and that a tentative agreement was reached for striking blue-collar workers. The House then gave a standing ovation for that settlement, and properly so.

Why, then, are we here talking about legislation? I suggested suspension of the legislation. Do you believe, with your experience as a negotiator, that with your recommendation for settlement there is a reasonable chance for acceptance by the membership?

Mr. Bean: Under the circumstances, I have no doubt in my mind that the majority of members will ratify the tentative agreement. I have no doubt in my mind about that.

Senator Lawson: I had not heard previously about the penalty of $10 million per day. That is outrageous, particularly in the face of an agreed-upon settlement. What will be the effect of that between now and the ratification date upon the conduct of your members? Do you think it would be easier to achieve a ratification if this legislation were suspended, or would it be more difficult?

Mr. Bean: It is hard to answer that because I would be trying to speak for 21,000 members. Let me say that it does not assist the process. In reality, our members are frustrated and angry because they have been denied collective bargaining, wage increases, et cetera. I will not repeat it.

It does not assist the process when you have unconscionable fines. The most offensive part of this legislation states that an individual who chooses to defy the law and to appear before the court must face that fine; they have no option. This is not something that I urge on anyone, but even if a member were to say that he or she knowingly defied the legislation and, like most other Canadians, were willing to spend a few days in jail because of a strongly held belief, in this case they do not have that option. They are told that they will face a fine. They will face having wages garnisheed, homes foreclosed, cars repossessed, and the loss of anything they own.

I am not one who disobeys many laws, but there are times when one must defy a law. Even former prime minister Trudeau acknowledged that if you defy a law that you believe is unjust, your purpose is legitimate. Martin Luther King said that one shows the utmost respect for the law when one defies it and is prepared to pay the penalty for defying it.

The fact of the matter is that individuals sometimes, in their own beliefs, want the right to defy a law and are prepared to pay the penalty. This legislation does not allow them to do that.

Senator Lawson: Someone described collective bargaining as being like a marriage. Regardless of what happens on this occasion, you must live together for the long-term future. What does this kind of legislation do to the long-term, good-faith relationship you are trying to develop with the employer?

•(1150)

Mr. Bean: It certainly cannot develop any good faith with either of these bargaining groups. We have reached tentative agreements for approximately 100,000, give or take. While they are not extremely enthusiastic or necessarily happy with those tentative agreements, at least they made the decision that it was acceptable to them.

I do not sit here and say what is acceptable for our membership; democracy says. Our membership votes. I accept the results of the vote. We had a tentative agreement for the correctional officers. The team supported it, the leadership supported it, and 59 per cent of the members said no. That is called democracy, and we live by that.

If the government imposes that same tentative agreement, I would suggest to you that the number will no longer be 59 per cent opposed to it but probably close to 100 per cent, who will not feel very good about having something imposed that the majority rejected.

Senator Kinsella: Do the witnesses have comment on the ILO, the International Labour Organization, and its system of conventions, particularly those to which Canada is party? This imposition by the state in Canada of a collective agreement, we are told by the minister, is unprecedented, or at least he knows of no precedent. Do you know of any precedent? More generally, what would be the position, in your view, of the ILO concerning this?

Mr. Bean: We have placed a number of complaints in years gone by to the ILO over legislating our members back to work, the denial of collective bargaining, et cetera. Every one of our complaints has been upheld by the ILO. In one case, they even sent a mission to Canada. That is highly unusual. They sent a mission to Canada back in the 1980s and condemned the Canadian government. There has been, I believe, four complaints since 1991, although we have not been involved with them, and all of those have been upheld by the ILO.

The difficulty, of course, is that all the ILO can do legally is give Canada a black eye amongst the United Nations countries. They are not able to impose any penalties or to say anything to the Canadian government, other than in very diplomatic words. They are always very diplomatic about saying you should not do that, you should honour the ILO conventions.

I find it somewhat ironic that a few months ago the government re-endorsed the ILO conventions on free collective bargaining, the right to strike, et cetera. No doubt the ILO will condemn this legislation.

Senator Kinsella: You can think of no precedent for this model of imposition on the free bargaining rights of employees in Canada?

Mr. Bean: There is no precedent with regard to the correctional officers and imposing legislation before they even get the right to strike officially. There is no precedent for allowing the Treasury Board minister to recommend himself, because that is what Governor in Council ends up being. There is no precedent for the minister to determine the terms and conditions of what will be imposed on the correctional officers. There are certainly precedents where Parliament has done that, but none that gave a blank cheque, if I could use that term, to a minister who has a conflict of interest in that he is the employer and he is also the government at the same time, at least as far as we are concerned, in the negotiations.

Senator Kinsella: Effectively, there is no third party overview in this process. For the general workers, for the Table 2 people, we know what the effects will be. There is, in effect, a third party if the agreement is ratified, and it has been negotiated. That is not the case for the Table 4 employees. That is why I tried to draw from the minister and the officials from Treasury Board exactly what they left on the table when negotiations broke down, what was the offer recommended by the majority in the conciliation report alluded to by your colleague, and then what is the difference between them, the spread. Could you articulate that so senators will have clear in their minds how close you were and that we do have a third party recommendation?

Mr. Bean: It also contains recommendations dealing with the elimination of an increment, because these are long-range steps. Our colleagues who will follow us will be able to tell you the number of increments. I think it is 7, but I cannot remember, before a correctional officer reaches their maximum, which is the working level. The recommendation of the conciliation board, when they added one in 1998, is to drop one at the bottom.

There are also a few other important recommendations which the government to date has said they could live with, namely, the letter from the Commissioner of Correctional Services on training, a requirement for more training and discussion at the local level and national level. They have also indicated that they could live with the recommendation of the conciliation board that within three months a joint union/management team be established to study the comparison of the correctional officer's work with the RCMP and report within nine months.

Mr. Jolicoeur has phoned me and has indicated to me that they could live with everything except the 4 per cent incremental increase in 1998 and that they would look for some change with regard to that when the incremental increase is dropped in 1998.

•(1200)

Senator Kinsella: Is it your understanding that if this bill were passed, the Treasury Board, in imposing the new collective agreement, would draft a collective agreement around the lines that you have just articulated?

Mr. Bean: That is certainly the indication. My problem is that I have nothing official on this.

I would remind senators that Treasury Board said that they would live with the conciliation board report for Table 2. When we saw the legislation, it no longer resembled the conciliation board report. In fact, the legislation included six more months with a 1 per cent raise. That is why I have a concern if Treasury Board is given a blank cheque.

Senator Kinsella: Perhaps the bill could be amended in clause 20, affecting the correctional officers, so that we would have a parallel to the clause where there is a tentative agreement. Failing that, the government has this authority, even though it is extraordinary authority. In Part 2 of the bill, if we were to have an amendment that would provide for the tentative agreement based on — indeed, being — the majority report of the conciliation board, is it your view that your membership would ratify that?

Mr. Bean: Yes, I believe they would because the negotiating team unanimously accepted the majority conciliation board report.

We have not had much feedback from the correctional officers to say that this is unacceptable.

I have been in this process before. I know there is some concern about amending the legislation because it will end up back in the House of Commons, which is about to begin a recess. I would prefer that the legislation be amended because then we will have a guarantee, and it is not a blank cheque.

However, I am aware — because I went through this with Mr. de Cotret here in the Senate — that the Senate can obtain a ministerial commitment to implement the conciliation board report. That you can do. I did it with Mr. de Cotret, and members from the opposite side were very influential in getting a ministerial commitment for the Senate to do that.

Senator Kinsella: We will be exploring that.

Perhaps you could remind honourable senators of the expiry date of the new collective agreement.

Mr. Bean: The expiry date would be June 1999.

Senator Kinsella: A couple of months away.

Here we are, honourable senators, dealing with an unprecedented proposition, totally excluding a third-party element in a dispute and probably running the risk of ILO convention violation. The spread between the parties is not that great. There is a vehicle available to us, namely, a ministerial letter. As well, the contract expires in a couple of months.

Mr. Bean, what harm or risk would the employer assume by not accepting such an approach?

Mr. Bean: The only risk they would assume is an extra 4 per cent pay increase for correctional officers, which Mr. Jolicoeur says is 3.5 per cent at payroll. I guess that is the risk.

Senator Kinsella: If that is what the risk boils down to, we are forced, based upon our Canadian values, to examine the principle that, when a right is taken away from a Canadian, it is justifiable in a free and democratic society only when there is minimal impairment of that right. Looking at it that way, would that 4 per cent constitute a minimal burden or a maximum burden?

Mr. Bean: Given that the economic situation for the government has improved considerably — in fact, it is showing a surplus — a 4 per cent increase for 4,700 people is hardly a maximum burden. I would suggest that it is a minimum burden.

Senator Lynch-Staunton: I wish to return to the concerns expressed regarding ancillary demonstrations to the rotating strikes. I suggest to you, Mr. Bean, that the more rotating strikes there are, the less sympathy your members will receive, no matter how justified their grievances and frustrations. You dismissed these events as being isolated incidents, saying that blocking the airport in Montreal twice in 10 weeks is nothing to be too concerned about, or words to that effect.

I have since had a chance to get a copy of a Table 2 Strike Bulletin, Day 39, which is put out by the Public Service Alliance of Canada. This one is dated March 12, 1999, and reads:

Willow Park, N.S. — The Flying Squad surrounded a busload of employees and prevented a shift from coming in.

Halifax, N.S. — ...At Woodlawn, picketers detained Ships' Crews boarding a bus in preparation for crewing a ship in Shelbourne. They boarded the bus one per hour and at 2:30 p.m., the bus had not departed.

I am reading from a Public Service Alliance of Canada publication, not from the *National Post*.

Saint John, N.B. — Members managed to slow down the operations at the Revenue Canada offices.

Summerside, PEI — For the second day in the row, Table 2 picketers in Summerside shut down the Tax Centre.... Support from Table 1 has been great!

Bagotville, Que. — UNDE Local 10501 walked off the job, jamming up the kitchens as well as the janitorial and transportation services. This had an impact on the unexpected arrival of German tourists who had to stop at Bagotville because of the snowstorm.

They are gloating about that one, I guess.

National Capital Region — Table 2 members shut down Vanier Towers today where several federal government departments are located — Revenue Canada, HRDC, External. Several thousand employees were sent home for the day. Morale was high.

Winnipeg, Man. — On Wednesday, TSO on Broadway St. was completely shut down — a very successful day. On Thursday, members picketed the Tax Warehouse on Weston St., and the Revenue Canada office on Stapon Road...

Edmonton, Alta — Canada Place was again the target of successful picketing. Members extended the hours of the picketing...to prevent deliveries. PSAC President Daryl Bean joined the picket line and talked about the status of Table 2 negotiations. Good morale.

Vancouver, B.C. — Two grain elevators on the Vancouver Waterfront were picketed by Table 2 members working at the Canadian Grain Commission, RCMP Garage and Stores, Pacific and Douglas Border Crossing and Taxation. Both grain elevators are down for the rest of the strike. Each day, members will add another grain elevator on their list of picket locations until all grain coming to the West Coast is shut down!

•(1210)

How do you expect us, after officially sanctioning this kind of behaviour, no matter how bad we feel this law is, not to be convinced that the only way that a stop can be put to these excesses is by passing the legislation into law?

I do not understand why you cannot send out a strike bulletin — this comes off your web page — and give us the same publicity and call a stop to these demonstrations and admit you are losing the sympathy of the Canadian taxpayers. Bad legislation will go through and bad feelings between employer and employees will continue.

Your members, in a sense, are unconsciously responsible, in part anyway, for this legislation being before us. I say that based on this and other strike bulletins, which I have not seen but which, no doubt, have the same flavour.

Mr. Bean: No doubt that information is pretty accurate. With regard to the grain outlets, as we have already indicated, there was an injunction, but we had already stopped before the injunction came in. That was March 12 I believe I heard you say. We had already stopped picketing there and there is no grain shutdown at this time, and has not been since last week sometime.

Yes, we have delayed people going into buildings. Yes, we have delayed PSAC members in accordance with the law, in accordance with Treasury Board's procedures. There is a Treasury Board procedure that says what happens when you encounter picket lines. You should go out and phone your supervisor and ask to be escorted across the picket line. Obviously, we have used it. While some of you may find this offensive, the reality of the situation is that if we cannot bring any pressure to bear on the government by doing that, then you could never resolve a strike.

Very little of what the government has argued is the reason for this legislation. The grain is taken care of now both through a commitment on our part that we will not picket and an injunction. That takes care of that one.

Yes, we have picketed Revenue Canada. We may be picketing them today at some locations. The claim that this is holding up so many returns is not factual. The factual situation is that the returns are up this year from where they were last year.

As I say, you may find it offensive that twice in 10 weeks picketers went to Dorval. I seriously hope that you can understand the frustration and the anger. It is impossible for me to control all of the members. There has been very little violence; not that I could condone violence at any time. In fact, when I am aware of it, I immediately contact the regional strike coordinator to make sure it does not happen again.

There have been some unfortunate situations; however, I hope that you can understand the frustration and anger; not that it justifies violence. I ask you to put yourself in the shoes of the lowest paid workers. I understand why you would raise the question and I respect the question.

Senator Lynch-Staunton: I respect your answer, except I do not think that you should officially recognize some of these excesses by boasting about them and, in effect, sanctioning them.

Senator Stewart: I have quite a different kind of question. If I understood you earlier, you said that remuneration to considerable numbers of your members is lagging behind the remuneration paid in certain parts of the private sector, where ordinary market forces operate.

In which category of employees, in which trade or profession, is the contrast between the public service workers and workers in the private sector most obvious?

Mr. Bean: It is most obvious in the blue-collar workers. It ranges anywhere from 20 to 40 per cent.

The average salary for the tradespeople, the blue-collar workers and the group within that category, is $14.83. I suspect if any of you have ever hired a plumber, a carpenter or electrician, they did not come to your house for $14.83. That is the reality.

Firefighters in the Federal Public Service earn approximately $37,000. Most of the major centres are paying approximately $50,000. As we have transferred over, through Transport Canada, the airport firefighters to the local airport authorities, we have been getting increases for firefighters and tradespeople in the neighbourhood of 20 to 30 per cent because they are so far behind the equivalent. When they go to the local airport authority, they must bring them up to the equivalent. The lowest increase for this group is probably in the neighbourhood of 15 to 20 per cent, which we have negotiated.

Senator Stewart: This is not exclusively a Canadian problem. I remember the Banking Committee was told over a year ago, in London, that certain sectors of the Government of the United Kingdom had become a training ground for people who, after they had been adequately trained, went off to the private sector to get better pay and perks.

Do you have much of that kind of movement among your people to the private sector?

Mr. Bean: Yes. There is a considerable movement to the private sector. However, given the unemployment situation, there are a number of others who come back in to replace them.

There is another example of not having a pattern of 2.5- and 2 in addition for the technical group. In addition to the 2, 2 and 4 per cent increases in two years, both the technicians and some of the workers in the grain commission got what they call terminal allowances, which ranged in the neighbourhood of approximately $200 to $500 a month, because they were having such a problem retaining those workers. The same is true for the computer science people, the auditors and some of the groups in the professional institute. As a result of their significant retention and recruitment problems, they have instituted what they call a terminal allowance.

•(1220)

Senator Stewart: I am raising the question because there was a time when it was thought that a job in the public service was seen as particularly good because the pay was better and the security was greater. The situation insofar as pay is concerned now seems to be quite the opposite of what it once was.

Are there any considerations in the public employment with which you are familiar that would justify a lower level of remuneration?

I like to tease ministers of the Crown that they are not at the level of vice-presidents of banks, while the Prime Minister is paid an indemnity which would not mark him as highly successful in the business world.

What is really going on here? I ask you: Are there other considerations which would justify a lower level of remuneration in the public service?

Mr. Bean: In the late 1970s or early 1980s a formula called the "Gauthier formula" recommended that public service tradespeople should be paid 90 per cent of the going rate for people outside. His reasoning at that time was that tradespeople in the federal public service enjoyed better job security and that they also normally had year-round work. Obviously, that better job security has disappeared with the alternate service delivery program, which means that there has been a significant amount of privatization and sourcing from other agencies as well.

The pension plan is another reason why some people stay in the federal public service. It is a good pension plan, but it is also a pension plan where workers contribute 7.5 cents of every dollar and that is matched by the employer, 7.5 cents of every dollar.

The reality is that a person working with a private company that would match a 7.5 per cent contribution is also receiving a good pension.

The pension plan is a major incentive for workers staying within the public service, especially for older employees. People know that when they retire, they will have a decent pension.

The Chairman: I thank you both for appearing here this morning.

Mr. Bean: I wish to close by thanking honourable senators. I do appreciate the forthright manner in which you are addressing this matter. I hope that you can understand that I am here speaking for the workers and expressing some of their frustration and anger. I can assure you that if some of them were here they would express it in a different manner than I.

The Chairman: I would ask that we call in the next witnesses.

Senator Lynch-Staunton: While we are waiting for the witnesses, would the Leader of the Government follow up on Mr. Bean's reminder of a similar situation to this one where emergency legislation was being discussed in the Senate. Apparently it was on the eve of a recess for the House, and the then minister, Mr. De Cotret, pointed out that, while he supported an amendment, it obviously would not pass because the House would have adjourned by the time the message reached there.

The Senate, at the time, was satisfied with a letter from the minister, which was the equivalent of an amendment. It did not have the force of an amendment, but it was his word and he lived up to it.

What is missing in this bill is some indication to the correctional officers of what kind of settlement they might expect. The wording in the bill does not address that, it just says that the Treasury Board will decide and the government will pass it. The minister indicated today that the settlement that was agreed to by the two negotiating teams, but turned down by the correctional officers, would form the basis of the final settlement. He hesitated to put that into the proposed legislation because he felt that it would limit his manoeuvring room in the sense that he might be able to improve upon it. This is all in the public record, so he will be abiding by it.

The public record would be even more official if we could get a letter from the minister along those lines. The correctional officers and their representatives would know, should this bill be passed, that it would be passed with a letter accompanying it indicating to them the minimum they could expect from the settlement following the dispute which is going on now.

I ask the minister to bring that to Minister Massé's attention. It would be helpful if we had a document along those lines.

Senator Graham: I do not think we can negotiate here.

Senator Lynch-Staunton: I am just passing along the suggestion and you may pass it on to him, perhaps, over lunch.

Senator Graham: I will take that on.

[*Translation*]

The Chairman: Mr. Bélanger and Ms Mathieu, I believe you have a presentation. Please go ahead.

Ms Viviane Mathieu, correctional officer: My name is Viviane Mathieu and I have worked as a federal correctional officer for over 15 years. I have worked in the Leclerc, Montée Saint-François and Donnacona institutions. In addition to my job as a correctional officer, I am also a mother and, as you can see, I am a Canadian and pretty nervous about having to make a presentation here. So I hope you will be understanding.

In all the places I have worked, I have encountered critical and dramatic events of all sorts. I have been taken hostage, I have had to intervene with inmates who were dying or covered in blood in all sorts of circumstances. Canada's 4,700 correctional officers have been through the same things.

Mr. André Bélanger, president, Union of Solicitor General Employees, PSAC: I am a CX 2 and have worked in the Correctional Service of Canada for 25 years. I work at the Sainte-Anne-des-Plaines Regional Reception Centre, a maximum security facility that also has a special handling unit, the only one in Canada for uncooperative inmates. We refer to it as the super maximum.

Correctional officers represent one of the links in the judicial system. Our primary functions are to protect society, and to ensure the safety and security of the institutions, the inmates and the staff.

Correctional officers work shifts, which means they rotate through three different work schedules, morning, afternoon and evening. They are on a 7-3, 7-4 arrangement, which means they work 7 days straight, then have 3 days off, followed by 7 on and 4 off. This means a total of 56 hours a week, plus the overtime they are required to work.

Ms Mathieu: Correctional facilities are miniature cities in which all the inhabitants are criminals, or in other words people who have gone through the legal system, people involved in organized crime. people who are extremely violent. Close to 77 per cent of those incarcerated are there because of crimes of violence. After going through the legal system, and ending up in penitentiary, their aggressive and violent behaviour is unchanged. Yet, we have to work with them daily. We have to deal with people who are rebellious and uncooperative and subject us to threats and all manner of pressures day in and day out. This is the atmosphere in which we have to work every day.

For instance, I have worked in facilities across Canada where we were three correctional officers to an average of about to 100 inmates. We have to deal with pressure from inmates constantly. We run into critical situations regularly.

Mr. Bélanger: We also need to draw to your attention the other risks we face, including the danger of exposure to such diseases as HIV, hepatitis C and hepatitis B. It is an acknowledged fact that the prison population represents a 15 times higher infection rate than the general Canadian population, because of inmates' high-risk behaviour.

By that very fact, correctional officers are at greater risk of contamination when we have to intervene in incidents of aggression or self-mutilation, or when hard-core inmates spit in our faces or hurl urine or excrement at us. Some take advantage of their condition and threaten us with contaminated razor blades or other sharp objects, or bite us. We run the risk of contamination as well during searches, for instance by pricking ourselves on various objects or on improvised tattooing equipment an inmate has just used.

Ms Mathieu: We do not have any such objects here to show you. I do not want to be a sensationalist, but I can tell you that we run into potentially life-threatening items every day.

As for what we said about hepatitis B and C, there are also two corrections officers in Canada who contracted HIV in the workplace from an injury. A number of others are taking AZT cocktails because of exposure in one way or another. There is a huge possibility that these people, too, are HIV-positive. That is what we run into daily.

As professionals, we need to perform our duties while exercising a safe, secure and humanitarian control over an inmate population that is violent and a threat to us and to society as a whole. Through the legal system, society has put these people in prison, but that does not put an end to their violent behaviour. We have to do clinical intervention with them. We have to help them become law-abiding citizens, people who will be able to return to society and exhibit socially acceptable behaviour.

Our jobs seesaw between having to ensure the safety of all, through repression, and intervening positively and proactively with inmates in order to help them become law-abiding citizens.

In our daily duties, we have to work within a variety of legislation, the Charter of Human Rights, the Criminal Code, the Official Languages Act, privacy legislation and so on.

There is also an aspect of highly professional interventions, such as administering CPR, handcuffing prisoners, using chemical gases or pepper spray. We need to respect the Charter and all the rights of citizens in so doing. Inmates do not cease to be citizens. They continue to be citizens even if incarcerated, and they have fundamental rights. We need to be mindful of respecting those rights.

Mr. Bélanger: Finally, our members rejected the agreement in principle because they felt the employer did not recognize the value of work done in such stressful and tough conditions.

We unanimously support the majority report of the Conciliation Board. We consider that the three recommendations on training, proposed rate of pay and the establishment of a joint committee to compare the duties, working conditions and rates of pay of correctional officers with those of the uniformed members of the Royal Canadian Mounted Police, represent a step in the right direction, the recognition of the work we do.

The addition of another level mentioned in the conciliation report has a limited cost, about 4 per cent for all correctional officers, as you heard earlier.

Ms Mathieu: Although we think the majority report of the conciliation board is a step in the right direction, we spoke earlier of money it is true. First and foremost, however, what correctional officers want is recognition of the difficult job they do bravely every day.

We are asking you to amend Bill C-76 to include the majority report of the conciliation board, so that correctional officers will feel respected in a bargaining process that has been so long and difficult for us.

We are imploring you to amend this bill. We are all workers, fathers and mothers. Every day, our working conditions impact on our families, our neighbours, our community. Over the years, those who are near to us have said "Enough is enough." Our working conditions must change. A comparison must be made with RCMP officers. We are a police force and we want to be treated like one. We thank you for having listened to us and we will be happy to answer any questions.

Senator Kinsella: I thank the witnesses for their very clear presentation. It is important for all Canadians to recognize the fundamental work done by Canada's correctional officers.

This morning, we talked about 728 of your colleagues who are non-designated employees. Could you give us a general idea of who these workers are and what type of work they do?

I work at the regional reception centre. Seven of the 160 officers in that institution will be in a legal strike position. We have the list of designated employees and it is similar to what is to be found in all the other institutions across Canada. How could the fact that seven officers out of 160 are on a legal strike be a threat to society or to inmates?

We would have preferred to settle our dispute before an adjudicator. Unfortunately, the government showed a lack of wisdom. It has known for years that as soon as correctional officers were in a position to strike, it would designate their positions under the Public Service Staff Relations Act. How can we, as workers, have our rights recognized and negotiate in good faith with the employer to find a basis for an agreement? We did not want to go on strike.

We perform important, even essential, duties within Canadian society. Even if you allowed us to strike, we are talking about seven or eight people in each institution, a dozen for certain at other facilities. Since beginning pressure tactics, it was understood that if ever there was an incident in an institution, whether or not we were on a legal strike, we would go in and perform our usual duties. Canadian society can count on us.

Ms Mathieu: We love the work we do, and we have to, to do such a difficult job. Furthermore, we have proved this. We have often let people through a picket line, to let inmates outside, for example.

Senator Kinsella: In your facility, what duties do the seven designated employees perform?

Mr. Bélanger: They are CX-2s, like I am. Some of them may be CX-1s. They occupy control positions or static security positions within the institution, but there are still 160 others to do the work. Almost all of us perform the same duties, with a few exceptions.

Ms Mathieu: We can all fill in all the positions. This does not present any real problems internally. Safety is not at all jeopardized. We would not allow that.

Senator Lynch-Staunton: What training does one need to apply for such positions? Once a person is hired, does the employer provide any additional training to become a correctional officer?

Mr. Bélanger: When I was hired by the Correctional Service, in 1974, Secondary V was required. However, the nature of the work is different now. The minimum education required is still Secondary V for a level 2 correctional officer, or CX 2, but many now have college or university degrees. One of the basic requirements for our work is judgment. Since the prison world is constantly changing, interview techniques have improved. We must now make evaluations about inmates and encourage them to participate in programs, and so on.

New employees have already gained some of that knowledge in college or university. We gained it through experience and training provided by the employer.

We have made many requests for further training. For example, in connection with the Corrects and Conditional Release Act, which was enacted in 1992, I got training in January 1999 on applying the act and its regulations.

Senator Lynch-Staunton: My question was more about post-hiring training. Is there not usually some training, for instance on handling weapons, or on psychology in the prison setting?

Ms Mathieu: To be hired, we have to have completed Secondary V. Then the employer sends us to staff college, where we take a series of courses on weapon handling, restraint methods and so on. This takes six or eight weeks, according to how much experience a person has. Then there might be refreshers and upgrades in the institution. There was much discussion at the bargaining table about training. Often there are no updates. We may have been 20 or 25 years in the Correctional Service, having to administer the Corrections Act and the Criminal Code, but without ever having received proper training. This is why the brief presented to the conciliation board by PSAC contains complaints about this.

Senator Lynch-Staunton: With regard to the matter of the status of the 728 not designated, according to Treasury Board it is an administrative error. We should read: "All your members should have been designated." The minister told us the word "all" should appear and that a letter should be sent to each of the members indicating that they are in designated positions. That is the process. The position is designated, not the individual.

Mr. Bean showed us a document recently signed by the government and the Alliance confirming that the 728 are not designated. He showed us a document, and I have here the 728 names in the positions. There is a flagrant contradiction between what we heard this morning and what this gentleman has shown us and explained to us. What is this about? Are these non-designated indeterminate positions because of a document signed by the employer and the employee or an administrative error? Will these 728 individuals eventually be designated?

•(1250)

Ms Mathieu: Clearly it is very complex. The agreement Mr. Bean referred to earlier between Treasury Board and the Public Service Alliance says that these people are not essential to the services to be provided to the public. The agreement was signed a few days ago. As Treasury Board was signing this agreement, it was introducing legislation to say that it had perhaps made a mistake. That is what we understand. It is denying us the right to strike.

As Mr. Bélanger mentioned, there are seven of these people in his facility. I have 212 correctional officers, and about a dozen of them are not designated. They can take certain action during a strike, but it will not have a major impact on the facility's operations. That is the way it is throughout Canada. Treasury Board reached an agreement with the Alliance that these positions were not obligatorily designated. We do not understand. The members find this extremely unfair.

Senator Lynch-Staunton: I can understand how you feel. There was a lack of information from Treasury Board. Why did it not tell us it had signed this document, that the two parties were in agreement, that it had made an error and that it was going to put it right. If it had been honest enough to tell us that it was regrettable, at least we would have had the facts. We were told that the administrative process was complicated, that letters had to be sent out, notice given, and so forth. The process has been going on for three years. Treasury Board officials should come and explain this contradiction to us.

We were told that it was necessary to withdraw the right to strike from those who had not yet exercised it and to add to the list the names of those with the right to strike in order to withdraw that right. The reason we were given was that, if the 728 officers set up picket lines, they would attract the sympathy of their designated colleagues. They work together. Once the dispute was settled, that could cause problems between colleagues. It was suggested to us that the 728 striking officers, even though there are only a few in each institution, would incite those who had to cross the picket line not to do so, although the law requires a designated employee to report for work — picket line or not, strike or not. Do you have any comments on this? Is the government's concern justified?

Ms Mathieu: We are professionals. There have been picket lines for some time. People who had to go into the penitentiary have done their work properly, and then some.

The inmates do not stop being hard to handle just because we are negotiating a collective agreement. In fact, they may be worse. They will focus on that and be even more mouthy with us.

As well, we will not leave our colleagues at work inside in a mess when there are picket lines outside. We have a highly developed sense of duty and of good citizenship. We administer legislation every day. We are aware that, as soon as a person is designated, he or she has to report for work. It is true that there were some delays, but minimal ones. Our people know this. Once they have been designated, they work, they do what has to be done. We do not understand the government. We find this legislation unfair and unjustified. We have always done what had to be done, in an extremely difficult and dangerous job.

Senator Lynch-Staunton: You are asking for the law to include the fact that the report by the conciliation board be applied.

Ms Mathieu: Yes.

Senator Lynch-Staunton: I doubt the government would accept that. We will make the suggestion to them. The government will reply that, if the bill is returned to the House with amendments, there will not be enough time to get it passed, because Parliament is adjourning for two weeks. Would a letter from the minister responsible, giving his assurance that the final agreement of the conciliation board would be a formal commitment on the part of the minister, be sufficient?

Ms Mathieu: Our membership will decide. If Treasury Board wants to sit down again this afternoon or tomorrow with us and agree to having the proposals of the majority report from the conciliation board included in our collective agreement, we will commit to presenting this to our membership. They will decide whether they want to accept it. Judging by my knowledge of my people, I believe they are going to accept.

[*English*]

•(1250)

The Chairman: We can now start with the clause-by-clause study of the bill. There are no more witnesses to hear from.

Senator Lynch-Staunton: Perhaps we could break now.

The Chairman: I am in the hands of honourable senators.

Senator Lynch-Staunton: Perhaps the minister is picking up on the suggestion that the President of the Treasury Board submit a letter here, along the lines suggested, based on the de Cotret precedent. That might help us to accelerate the process.

Senator Graham: I have already asked that that request be taken into consideration. It is being considered at the moment.

Senator Lynch-Staunton: We should then wait for such an undertaking. It may be easier to get the response.

Senator Carstairs: I suggest we move to clause-by-clause study. Remember, we are only at the committee stage. We can defer third reading until later this day.

Senator Murray: We might want to amend in committee one or another of the clauses. The undertaking or lack thereof by the President of the Treasury Board would be quite relevant to that process. Why not wait until after the lunch adjournment?

Senator Graham: Could you not move an amendment at third reading?

Senator Carstairs: That is my suggestion.

Senator Graham: We can do clause-by-clause study now.

Senator Kinsella: My suggestion is that we adjourn until two o'clock, for lunch, then come back and continue in Committee of the Whole. There may have been developments over that period. At any rate, we would then conclude Committee of the Whole and present the report to the house. We will deal with third reading later on. We have seen sitting here since nine o'clock this morning.

•(1300)

My recommendation is that we adjourn this committee until two o'clock, come back then and continue.

Senator Carstairs: That is not my recommendation, quite frankly, honourable senators. As it has become customary for the other side to propose all their amendments at third reading, I do not know why they are insisting on moving amendments at this particular stage. I can think of no recent experience in which the amendments to a bill have been proposed in the committee stage in this chamber. They have always been deferred to third reading. I think it would make the whole afternoon far more effective and efficient if Bill C-76 were to be called once we reach Orders of the Day, although I am quite prepared to call it at the top of the Order Paper. At that point, honourable senators could introduce amendments and, by then, I would hope that we have an indication from the minister as to whether such a letter is available.

Senator Lynch-Staunton: Honourable senators, the President of the Treasury Board is the one who wants to see the bill passed faster than anyone. Surely, it will not take him all afternoon to decide whether a letter along the lines suggested would be offered. I would hope that between now and two o'clock we will know. Otherwise, he will show an indifference to the Senate, which will not be helpful.

Another hour may allow those of us who have been here since nine o'clock non-stop to come back a little refreshed — and perhaps a little less cranky.

Senator Graham: That might be helpful.

Senator Carstairs: Honourable senators, there are a couple of other things that we must do this afternoon for Royal Assent, mainly supply. My suggestion is as follows: We come back at two o'clock and begin our ordinary process; we then call Bill C-35 and Bill C-74; and we then go into Committee of the Whole and complete Bill C-76.

Would that be agreeable?

Senator Kinsella: Agreed.

Senator Lynch-Staunton: Agreed, thank you.

Senator Carstairs: Honourable senators, we must rise and report progress to the Speaker.

Hon. Eymard G. Corbin (The Hon. the Acting Speaker): Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Peter A. Stollery: Honourable senators, the Committee of the Whole, to which was referred Bill C-76, to provide for the resumption and continuation of government services, reports progress on the bill and requests leave to sit later this day.

The Hon. the Acting Speaker: Honourable senators, the Committee of the Whole requests permission to sit later this day. Is it agreed?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: In that case, honourable senators, I leave the Chair and the sitting of the Senate is suspended until two o'clock.

The Senate adjourned during pleasure.

The Senate resumed at 2:00 p.m., the Speaker in the Chair.

•(1400)

SENATORS' STATEMENTS

WALL STREET PROJECT

PROMOTION OF PRODUCTS FROM MINORITY COMMUNITIES

Hon. Donald H. Oliver: Honourable senators, I rise today to tell you about a movement that has developed and is working in and for the betterment of black communities in the United States. It is known as the Wall Street Project, and it had its origins in 1968 when the late Dr. Martin Luther King Jr. initiated the Poor Peoples Campaign.

Throughout his career, Dr. King fought for racial equality and economic inclusion. His vision was that no one should be excluded from the opportunities offered by the economic success of the United States.

The purpose of the Wall Street Project, which was announced on January 15, 1997, by the Reverend Jesse Jackson, is to challenge corporate America to open up to minority vendors and end the multi-billion-dollar trade deficit that it has with minorities across America. The project uses the forces of the dollar, along with research and mass coordination, to expand markets for the sale of goods and services to large U.S. corporations by minorities, and to open doors in corporate America to the black community.

Since its beginning, the movement has focused on the Wall Street investment community, the automotive industry centred in Detroit, and the commerce sector in the Midwest, and it is now moving into Silicon Valley in California.

The genius of the message which is being sent to corporate America is in its simplicity: The black and minority communities will buy your products if you invest in, and open your doors, especially in areas of management, to the black community. The example set by AT&T is instructive in this regard. Its next billion dollar bond offering will be co-managed by minority-led investment firms and another $200 to $300 million in bonds will be entirely managed by minority firms. This will lead in turn to investment in poor, inner city and urban areas by AT&T.

The most exciting initiative is the most recent one announced by Reverend Jackson. The Wall Street Project is focussing on Silicon Valley and the high-tech industry. Many of the top computer firms have no African-Americans on their board of directors. The project will purchase stock in the top 50 corporations in Silicon Valley with a view to forging a new relationship with the digital community. As Reverend Jackson says, it will provide the movement an opportunity as stockholders to question the management practices of these corporations, to question exclusionary policies.

It is also the intention of the project to utilize churches as the basis to start investment and consumer clubs. These clubs will teach people how to invest wisely in stock purchases, and to end the cycle of debt. The results so far indicate that the project has been successful in expanding the marketplace for minority business by successfully negotiating with corporate America.

Honourable senators, this is a model which could easily be developed in Canada. It demonstrates a win-win situation for minorities and for business. It raises the awareness of business as to the existence of a powerful economic group in the black community as well as opening up access in corporate management for visible minorities in Canada.

NEWFOUNDLAND AND LABRADOR

FIFTIETH ANNIVERSARY OF CONFEDERATION

Hon. Joan Cook: Honourable senators, at the stroke of midnight on March 31, 1949, Newfoundland and Labrador became the tenth province of Canada, and I, at 14 years of age, after an ordinary night's sleep, became a Canadian.

Last weekend, at home in St. John's, I attended and participated in a symposium held by the Newfoundland Historical Society. The President, David Bradley, is the grandson of Newfoundland's first senator, the late Gordon F. Bradley. This was an opportunity for the people of the province to become reacquainted with the circumstances leading up to that watershed in our history.

The idea of joining Canada had its beginning back in 1864, when two representatives, Fredrick Carter and Ambrose Shea, attended the Charlottetown Conference. The decision then was that Newfoundland faced east to Britain and not west to Canada. Confederation was not considered seriously again until after World War II. The world had changed by then, and so had Newfoundland.

So, honourable senators, through a style and process that, I dare say, was unprecedented in recent history, the late Joseph R. Smallwood became the province's first premier.

Honourable senators, celebrating the fiftieth anniversary of Confederation with Canada offers an opportunity to reflect not only on what it means to be a Canadian but also on our contribution to this nation. A tradition of self-reliance and hard work has been handed down to a generation of Newfoundlanders and Labradorians who have applied these skills to harness new opportunities in the global economy, both at the national scene and at home in rural Newfoundland and Labrador.

Worthy of note is that from the wreckage of the 1992 cod moratorium has emerged a new, scaled-down and, ironically, richer fishery, with landings hitting 380 million last year.

We now celebrate 50 momentous years of being Canadians. We have brought our incredible wit and charm, cultural richness and centuries of history. Even this very Parliament of Canada is enriched every day by Newfoundland's union with Canada. Our music, Newfoundland folk songs, is played on the carillon of the Peace Tower. Folk songs were part of the full whole national musical tradition which we brought to Canada, freely given.

Most of all, honourable senators, we have brought our spirit of generosity, grit and determination, which contributes mightily to the greatness of this nation.

So it is with that spirit that, in the Canadian national anthem, we sing, "O Canada, we stand on guard for thee," but in our provincial anthem we sing, "God guard thee Newfoundland."

Hon. Senators: Hear, hear!

CANADIAN INSTITUTES OF HEALTH RESEARCH

Hon. Wilbert J. Keon: Honourable senators, last week, on Wednesday, March 17, the Canadian Institutes of Health Research held its inaugural meeting. Later that evening, I attended a dinner to celebrate the occasion. Assembled there were the country's leading scientists and health professionals.

I was pleased to see that, following last month's tabling of the budget, the government acted so quickly in its appointment of an interim governing council for this very important initiative. The 31 members who make up the governing council are representative of the vast expertise in Canada's scientific and health professional communities.

The establishment of the Canadian Institutes of Health Research is probably one of the most significant events in the field of health since the Canada Health Act. The Canadian Institutes of Health Research is a broad, national coalition that can provide the federal, provincial and regional governments with a solid base of scientific knowledge upon which health policy and planning can take place.

•(1410)

By coordinating and facilitating national research initiatives based on population, epidemiological health and firm science, the Canadian Institutes of Health will provide objective, long-term health-care planning based on scientific research in order to ensure and promote better health for all Canadians.

I urge all honourable senators to be supportive of this important initiative as it takes shape over the next year.

NEWFOUNDLAND AND LABRADOR

FIFTIETH ANNIVERSARY OF CONFEDERATION

Hon. Ethel Cochrane: Honourable senators, as Senator Cook has said, on March 31 the province of Newfoundland and Labrador will celebrate the 50th anniversary of joining in Confederation with the other provinces of Canada.

Along with other senators, I shall be speaking about that event during this afternoon's debate. There will, of course, be ceremonies throughout our province on March 31 to honour this occasion, as well as festivities all over the province during the rest of the year under the banner of Soiree '99.

Newfoundland's doors will be open all year to anyone who wants to join in celebrating the 50th anniversary of Confederation. There will also be a ceremony here on Parliament Hill on March 31, including a performance at eleven o'clock in the morning under the Peace Tower by the performing music groups of Prince of Wales Collegiate in St. John's. The collegiate's performing groups include a concert band, a concert choir, a jazz band, and a chamber choir. Their performance will include some traditional Newfoundland music as well. The performers will later be guests at a reception at Rideau Hall to honour the 50th anniversary.

A WORLD FREE OF NUCLEAR WEAPONS

Hon. Douglas Roche: Honourable senators, I wish to draw to your attention a very unusual advertisement that will appear in the April 5 edition of *Maclean's* magazine, which comes out next Monday. The advertisement to which I refer follows up a 1998 poll by the Angus Reid professional polling organization that showed that 93 per cent of Canadians want a world free of nuclear weapons.

The advertisement is unique, in that more than 1,200 individuals and organizations paid $30 each to have their name included. They will not receive a tax receipt or tax deduction for their contribution. They contributed because they believe in the message and want the government to hear it. The message contained in the advertisement is that they call on the Government of Canada to give leadership in NATO and at the United Nations to achieve the goal of progress in nuclear elimination.

World military arsenals hold more than 35,000 nuclear bombs, and 5,000 of these are on high alert. There could be no medical response in a nuclear war. Nuclear weapons are weapons of mass destruction. These individuals want the government to give our children and our grandchildren a world free of the terror of nuclear weapons.

The initiative was undertaken by Physicians for Global Survival in Canada in an effort to increase public awareness about the importance of nuclear issues. I commend Physicians for Global Survival and each and every individual and organization involved in this effort.

ROUTINE PROCEEDINGS

EXTRADITION BILL

REPORT OF COMMITTEE

Hon. Lorna Milne, Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, March 25, 1999

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWENTY-THIRD REPORT

Your committee, to which was referred Bill C-40, An Act respecting extradition, to amend the Canada Evidence Act, the Criminal Code, the Immigration Act and the Mutual Legal Assistance in Criminal Matters Act and to amend and repeal other Acts in consequence, has, in obedience to the Order of Reference of Thursday, December 10, 1998, examined the said bill and now reports the same without amendment, two senators having abstained.

Respectfully submitted,

LORNA MILNE
Chairman

The Hon. the Speaker: Honourable senators, before I call for action on the report, I must bring to the attention of the Senate that the report has an inclusion in it, which is not normally within the rules. It states "two senators having abstained." That is not a proper report, as such. According to *Beauchesne's Parliamentary Rules & Forms*, there is no authority of a committee of the house, when considering a bill, to report anything to the house except the bill itself.

Hon. John Lynch-Staunton (Leader of the Opposition): Send it back, then.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): We cannot proceed with it.

The Hon. the Speaker: I am in the hands of the Senate.

When shall this bill be read the third time?

Senator Milne: At the next sitting of the Senate.

The Hon. the Speaker: It is moved by the Honourable Senator Milne, seconded by Honourable Senator Butts, that this bill be placed on the Orders of the Day for the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Senator Lynch-Staunton: Your Honour, I want some further information. I thought you just told us that the report was out of order. We suggested that it then be sent back, but yet you carried on. I do not understand.

Senator Kinsella: Follow the rules!

The Hon. the Speaker: I simply brought it to the attention of the Senate, as it is my obligation to do when something is not in order and we catch it. It is up to the Senate to decide what to do, however.

Senator Lynch-Staunton: Your Honour, you have said that, in your opinion as Speaker, which we respect, you find this report out of order. You ruled that yourself. Therefore, there is only one conclusion, namely, to send it back to the committee for repairs.

Senator Kinsella: That is right.

The Hon. the Speaker: It was not my intention to rule, because I was not asked to rule. I cautioned the Senate that there is a growing practice of reports from committees being basically against the rules. It is for senators to decide if we wish to have the rules enforced.

Unless I hear another motion, it was moved by the Honourable Senator Milne, seconded by the Honourable Senator Butts, that this bill be read a third time at the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Senator Lynch-Staunton: On division.

Motion agreed to, on division.

THE ESTIMATES 1999-2000

INTERIM REPORT OF NATIONAL FINANCE COMMITTEE ON MAIN ESTIMATES PRESENTED AND PRINTED

Hon. Terry Stratton: Honourable senators, I have the honour to present the fourteenth report of the Standing Senate Committee on National Finance concerning the examination of Main Estimates laid before Parliament for the fiscal year ending March 31, 2000.

I ask that the report be printed as an appendix to the *Journals of the Senate* of this day and that it form part of the permanent record of this house.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

(For text of report, see today's Journals of the Senate*, Appendix , p.1418.)*

Senator Stratton: Perhaps I could ask for leave to consider the report now.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Stratton: As I said yesterday, in order to take a brief look at the Main Estimates for 1999-2000 with respect to what will be spent in the next fiscal year, the National Finance Committee met last night. The Main Estimates were reviewed to the extent possible in the short time frame. On such short notice, the Treasury Board official could not do much preparation. However, it is our intention to meet in April and May on at least two occasions to examine the report.

At committee last night, we also agreed that we would select certain departments within the budget to examine in more detail. In essence, that is a summary of what we looked at.

•(1420)

Hon. Anne C. Cools: Honourable senators, I wish to underscore what Senator Stratton has said. This is an interim report. The committee will be continuing its rather exhaustive study on the Main Estimates. This interim report was brought forward to facilitate the passage of Bill C-74 later today.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the report?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

SUPREME COURT OF CANADA

ARTICLES REGARDING REMARKS OF SUPREME COURT JUSTICE—NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, pursuant to rule 56 (1),(2) and 57(2) of the *Rules of the Senate*, I give notice that two day's hence, I shall call the attention of the Senate:

(*a*) to a report of a speech by Supreme Court of Canada Justice Frank Iacobucci on March 24, 1999 by Janice Tibbetts in the *Ottawa Citizen* on March 25, 1999 entitled, "Supreme Court judge defends judicial activism;"

(*b*) to a report of Mr. Justice Iacobucci's speech of March 24, 1999 by Erin Anderssen in the *Globe and Mail* on March 25, 1999 entitled, "Supreme Court judge rejects proposal to grill nominees — Iacobucci warns against importing U.S. system of selecting jurists;"

(*c*) to a report of Mr. Justice Iacobucci's speech by Sheldon Alberts in the *National Post* on March 25, 1999 entitled, "Judge defends decisions affecting social policies — Rare Public Speech;"

(*d*) to the comments of Professor Robert Martin, Faculty of Law, University of Western Ontario in response to Mr. Justice Iacobucci quoted in Sheldon Alberts' March 25, 1999 *National Post* article that:

> "He suggests that the court is there like a group of professors who are setting final exams for legislatures, that Parliament is like a student essay to be marked."

(*e*) to the continuing public commentary on judicial activism in Canada;

(*f*) to the matter of judges' public statements;

(*g*) to the principle and concept of judicial independence of Canadian justices; and

(*h*) to the role of Parliament in these matters.

HEALTH

PROTECTION OF CONSCIENCE OF HEALTH CAREGIVERS—PRESENTATION OF PETITION

Hon. Raymond J. Perrault: Honourable senators, I have the honour to present to the Senate a petition signed by 150 practitioners and students of health and health care in Canada, and concerned citizens of Canada, all being of the age of majority. The petition relates to the protection of conscience in medical procedures.

QUESTION PERIOD

NATURAL RESOURCES

END OF MORATORIUM AFFECTING CERTAIN BRITISH COLUMBIA OFFSHORE OIL AND GAS RESERVES—REQUEST FOR BRIEFING DENIED—GOVERNMENT POSITION

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate.

Today, the media is full of reports about the possible end of a 28-year moratorium on offshore oil and gas drilling, which affects the B.C. coast, the environment, the fisheries and the economic development of the coast.

Six months ago I wrote to Minister Goodale, the Minister of Natural Resources, stating that, in view of recent news reports about the pressure to lift the moratorium, and as a former minister of energy and as a B.C. senator, I would like a briefing on this subject. I copied the letter to the Honourable Lloyd Axworthy, Minister of Foreign Affairs, because this is in disputed waters in Dixon Entrance.

In October, we received a note from the minister's correspondence manager stating that they had received our letter. Five months later, when I did not receive a reply, we wrote the Deputy Minister, a former trade officer of mine, Jean McCloskey, stating that in the absence of any response from Minister Goodale, and since this is hardly a private policy matter, could she arrange a meeting, particularly in light of the coastal communities network conference in April.

In February and March, we made other requests of the office and received no reply.

Recently, on March 19, we received a phone call stating that we would receive a letter from Mr. Goodale early next week which will say that there are no new developments in B.C.'s offshore oil and gas industry and that they have nothing to brief us about.

There have been comments on this matter in the media. Industry groups are saying that there are 20 trillion cubic feet of natural gas and 9.6 billion barrels of oil recoverable off the Queen Charlotte Basin. Since the only person who does not know anything about this, or apparently is not allowed to know anything about this, is this senator from British Columbia, could the minister use his good office to see that this information is forthcoming; or is this some secret deal of the Liberals?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, with the greatest respect to Senator Carney, I am sure it is not a secret deal. I will inquire of the minister and urge him to give you a response at the earliest possible time.

I am not aware of the moratorium being lifted. I know that there are discussions on the East Coast about lifting the moratorium in certain areas in which Senator Comeau would be interested. However, given that the honourable senator is a former minister of trade, a former distinguished president of the Treasury Board, and a former holder with great distinction of many other portfolios in the previous government, I shall urge upon my colleague and other responsible officials to provide an appropriate response at the earliest possible time.

In the meantime, I shall make my own inquiries about any lifting of the moratorium.

Senator Carney: Honourable senators, would the minister not agree that six months is an ungracious amount of time to be kept waiting on an issue that has some importance to the coast of British Columbia? Could I ask you to undertake to your cabinet colleagues that they do not keep members of this chamber waiting for half a year for information that deals with their regions?

Senator Graham: Honourable senators, whether it is a letter or another event, six months is a long time to be kept waiting.

NATIONAL DEFENCE

EFFECT OF EVENTS IN KOSOVO ON CANADIAN PEACEKEEPERS IN BOSNIA—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, we have gone to war in the last 24 hours. We have not given much thought to Canadian Forces personnel in Bosnia. One of the great dangers facing Canadian Forces in that area is that a war in Kosovo could easily spill over into Bosnia and Canadian troops would find themselves in a shooting war.

What steps has the government taken to reinforce these Canadian Forces units in Bosnia in the face of what can only be described as inevitable and, perhaps, even imminent war?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the events that are taking place in Kosovo could, indeed, have an even more dramatic effect on the Bosnian situation, if yesterday's measures had not been initiated.

•(1430)

I want to assure Senator Forrestall and all honourable senators that our Minister of Foreign Affairs, our Minister of National Defence, their officials, and our representatives in that part of the world are monitoring the situation closely. They are cognizant of the situation of our representatives in Bosnia, in addition to the conditions which already prevailed. I wish to give all honourable senators the highest assurance that every consideration is being given to their safety now and in the future.

POSSIBILITY OF DEPLOYMENT OF LAND FORCES IN FORMER YUGOSLAVIA—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, as usual, we have to get our information from the press. If colleagues want a good and reliable source of information about what is happening in the former Yugoslavia, I suggest that they tune in the BBC. They are not doing a bad job and they are at least 24 hours ahead of us.

As I have said, we learned about Canadian Forces deployments for military operations in Kosovo from the press, not the minister. *The Edmonton Sun* told Canadians that the government was sending 200 soldiers from Lord Strathcona's Horse, 200 from 1st Service Battalion; 34 from 1st Combat Engineer, and aircrew from 408 Tactical Air. The press is now saying that 3rd Princess Pats Canadian Light Infantry are on standby.

What Canadian force ground units are being sent to Kosovo? Are we preparing for a ground war with Serbia?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the answer is in the negative with respect to Canada's participation in a so-called ground war.

At this time, consideration of deploying NATO ground forces, including the 800 Canadians to implement the Rambouillet agreement has been put off pending the outcome of the air campaign.

FOREIGN AFFAIRS

AIR STRIKES BY NATO FORCES IN FORMER YUGOSLAVIA—CRITERIA FOR CANADIAN MILITARY INTERVENTION OUTSIDE OF NATO INVOLVEMENT—GOVERNMENT POLICY

Hon. Douglas Roche: Honourable senators, we all recognize that the bombing of Serbia is a grave matter for the world, and certainly for Canada. To the best of my knowledge, since the United Nations began Canada has never taken part in a military action that was not sanctioned by the United Nations. We all know about the ethnic cleansing and slaughters that precipitated this action, but I should like to ask the Leader of the Government in the Senate the following question: What criteria are now established for Canadian government military action outside the United Nations?

We know that there are slaughters in other places, particularly in Africa, where we have not intervened. I think the Canadian people are owed an explanation of what we, as Canadians, will do to strengthen the ability of the United Nations to deal with crises of this kind.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, Senator Roche has made an interesting observation and one of urgent importance. I had hoped to participate before our break in his inquiry with respect to Canada's membership on the Security Council. I intend to do so as soon as we return. Perhaps this is one of the matters that we can address at that time.

With respect to the situation which exists today, I must observe that Canada stands by its allies in participating in NATO's military actions in Kosovo. We had hoped, as I have said on other occasions, that this situation could be resolved diplomatically through the United Nations, the OSCE, and the contact group. However, we and our allies could not stand by while the current offensive of the Serbian government threatened to result in what can only be termed a humanitarian disaster.

President Milosovich must take responsibility for the current situation. He can stop the current NATO bombing by simply declaring a creasefire in Kosovo, reducing Serbian security forces in the region to the levels agreed to in October, and committing his government to the agreement proposed during the Rambouillet negotiations. This agreement would provide for Kosovar autonomy within the boundaries of Yugoslavia.

It is important to recognize and emphasize that Canada does not stand alone in these matters. We act in concert with other nations. In this respect, an appropriate coalition was in place to make a difference in Kosovo. It is regrettable that similar circumstances have not permitted the international community to mount an effective response to problems in other areas, such as in Africa, as alluded to by Senator Roche and others. However, in my opinion, that is it not sufficient reason for us not to do something in Kosovo.

Senator Roche: Honourable senators, without being unnecessarily argumentative with the Leader of the Government, whose views I respect, I am not satisfied with that answer and nor, do I think, would many Canadians be satisfied.

Militarily speaking, Canada did stand aside in the case of slaughters in other parts of the world. I ask again: What is the criteria for Canadian military intervention if we are to do it outside the mandate of the Security Council of the United Nations? Is it when a particular number of people are killed or some particularly heinous manner of slaughter is undertaken? Has thought been given to how this action will rupture relations with Russia, which is protesting vigorously against this end run around the United Nations?

Canada campaigned hard for a seat on the United Nations because we wanted to make a difference. Is NATO going to be the determining factor in Canadian foreign policy, or will it be the United Nations?

Senator Graham: Honourable senators, circumstances change. Obviously, it would be preferable to act always under the direction and the umbrella of the United Nations. The Secretary-General of the United Nations himself has approved this action. However, it would be impossible to obtain unanimity within the United Nations or the Security Council given the veto that is held by Russia. Russia indicated, not that they would approve bombing, but that they would act only in respect of any action taken subsequent to Rambouillet under the auspices of NATO and the contact group.

However, I do not think that at any given time we can play a numerical game with how many lives are being put in jeopardy. This is a very grave humanitarian problem. Canada boasts on the world stage of being the best country in the world, and for this reason we do have responsibilities to other nations. We cannot leave it up to the United States, the United Kingdom, or our other allies to do what is, in this situation, the dirty work.

I assure honourable senators that we are very sensitive to the situation and that the decisions were made after very long and thoughtful consideration of the consequences.

•(1440)

I believe at this particular time, Senator Roche and other honourable senators, that we should support this effort. We should support our troops. We should support our pilots, in particular, who are currently engaged in events in that part of the world.

Senator Roche: Honourable senators, I was willing to let seventh-eighths of the minister's last comment go. I do not say that he meant it, but I would certainly not want an indication on the record that I do not support the Canadian Armed Forces in their arduous and dangerous harm's way role. Of course, I do; that is not the issue. The issue is the future of what will be the criteria upon which to build conditions for world peace.

Senator Graham: I accept that.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the minister said that we are trying to solve a humanitarian problem. Can he explain how bombing a sovereign nation and putting civilians at risk will solve a humanitarian problem?

Senator Graham: Honourable senators, if the Honourable Senator Lynch-Staunton has a better solution, perhaps he should come forward with it.

There have been long, hard negotiations through the contact group. There are other countries involved. We are one of 18 members of NATO.

The decision has been sanctioned by the Secretary General of the United Nations. Yesterday afternoon and last night, President Clinton graphically explained the future consequences of not taking action now. I think the action that was taken was the right one. Perhaps it should have been taken a long time ago. We are taking action at the present time collectively with our NATO allies to avert other major tragedies that might evolve in the future.

Senator Lynch-Staunton: Honourable senators, of course I do not have an answer, but I am not satisfied that the correct course of action we are presently engaged in is the right one.

What consequences does NATO expect to achieve by these bombing raids? We are doing this, apparently, to dismantle certain military installations. How will that guarantee that the Kosovars will regain their homeland peacefully and get their homes back? Is that not what we all aspire to accomplish? How will bombing a so-called enemy achieve that goal?

Senator Graham: In a perfect world, we would have perfect answers.

Senator Lynch-Staunton: I am not talking about a perfect world; I am talking about the Balkans.

Senator Graham: The people on the ground in that part of the world, who are more knowledgeable than I — perhaps not more knowledgeable than the Leader of the Opposition — have taken that position, and I support it.

If one looks at a map of Europe to see where that area is situated, one recognizes that the area is a potential time bomb for a more widespread war, the consequences of which would be awful.

Will bombing bring Mr. Milosevic to his senses? Will it bring him back to the table? I do not know. Hopefully, prayerfully, it will.

Senator Lynch-Staunton: They will bomb away, regardless of the consequences.

AIR STRIKES BY NATO FORCES IN FORMER YUGOSLAVIA—
FAILURE OF PRIME MINISTER TO ADDRESS
CANADIAN PEOPLE—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, the minister informed us yesterday that the President of the United States spoke to the American people concerning this matter, and the Prime Minister of the United Kingdom spoke to the people of the United Kingdom. Would the Leader of the Government in the Senate explain why the Prime Minister of Canada has not personally informed the Canadian people about what is happening in the Balkans, why Canadian Forces have been deployed, and why the matter was not even been debated in Parliament?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the matter was debated in Parliament on a previous occasion. I understand that during Question Period in the other place, where the Prime Minister is the Leader of the Government, he addressed questions on this particular situation.

HUMAN RESOURCES DEVELOPMENT

CHANGES TO EMPLOYMENT INSURANCE ACT—
REQUEST FOR FURTHER PARTICULARS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It relates to a response I received to a question raised in the Senate on February 17 regarding the Employment Insurance Fund, the accumulation of surplus in the fund, and the adequacy of budget reductions and premiums. In part of the response, the government said:

> The Employment Insurance Account has been accounted for as part of general government operations since 1986, as recommended by the Auditor General. And under the current system, accumulated surpluses are used temporarily by the government...

Can the Honourable Leader of the Government in the Senate please tell us to what temporary uses the government puts the money from this fund? How long are the funds borrowed? Are they returned, and how much is outstanding?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, obviously that is a question on which I would have to seek counsel and get more information. I will then be prepared to bring forward an answer.

NATIONAL DEFENCE

FIRE ABOARD AURORA AIRCRAFT IN NOVA SCOTIA—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, I wish to ask the Leader of the Government if he has a briefing note at hand and can tell us what he knows about the fire onboard an Aurora aircraft earlier today?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am not aware of a fire on board an Aurora aircraft. Is my honourable friend sure it was an Aurora aircraft?

Senator Forrestall: It was off the southwest coast of Nova Scotia. Fire broke out in the plane. It overflew Yarmouth and managed to get back to Greenwood. There are no reports that we know of with respect to anyone being injured, but when a fire breaks out onboard an aircraft, it must be a major concern. I thought, perhaps, the Leader of the Government in the Senate might have an update because the incident occurred this morning.

Senator Graham: Honourable senators, I regret very much that the incident occurred and I regret that I do not have an answer. I am not current on this matter, but I will respond as soon as I can.

Senator Forrestall: Will the honourable leader try to give us an answer sometime in the middle of April?

Senator Graham: I will try to give an answer later today.

[*Translation*]

POST-SECONDARY EDUCATION

MILLENNIUM SCHOLARSHIP FUND—NEW DEVELOPMENTS IN RELATION TO FEDERAL GOVERNMENT INITIATIVES—GOVERNMENT POSITION

Hon. Jean-Claude Rivest: Honourable senators, yesterday, thousands of Quebec students took to the streets in Montreal, Quebec City and elsewhere to protest against the Government of Quebec and the lack of financial resources available to the world of education. They ended their demonstration in front of the office of Mr. Monty, who is in charge of the Millennium Scholarship Fund.

Several hundred million dollars belonging to the people of Quebec are frozen, because the Right Honourable Prime Minister of Canada, Mr. Chrétien, has decided to build himself a monument on the occasion of the millennium and to thumb his nose, in taking this initiative, at the wishes of everyone in education in Quebec. Federalists, sovereignists, the people in universities and colleges, students, professors, researchers — everyone was opposed this initiative, but the prince on a whim wanted it taken.

At this point, no negotiations are being held between the Government of Quebec and the Government of Canada. Several hundred million dollars are available. Will Quebecers get their share of this initiative by the Government of Canada?

[*English*]

Hon. B. Alasdair Graham (Leader of the Government): Absolutely.

Honourable senators, I am pleased that the Honourable Senator Rivest raised this question. At the beginning of the year 2000, Quebec students will obviously receive their fair share. The $300 million in scholarships will be paid each year by the Canadian Millennium Scholarship Foundation. It is a way in which Canada can reward deserving students directly in every province of the country.

[*Translation*]

Senator Rivest: The Minister of Human Resources Development, Pierre Pettigrew, said in a statement a few weeks back that he would examine the issue and contact the Quebec minister of education in an attempt to find a solution. One of the problems is that the Government of Quebec is refusing — on account of its jurisdiction over education — to negotiate with Mr. Monty. Mr. Pettigrew has proposed to act as mediator in order to find a solution. Could the minister tell the honourable senators of any developments in the initiatives of Minister Pettigrew?

[*English*]

•(1450)

Senator Graham: Honourable senators, I understand that there have been discussions and that Minister Pettigrew has indicated that he would be in contact with the officials in Quebec and the officials of the Millennium Scholarship Foundation.

You must recognize that the Millennium Scholarship Foundation is at arm's length from the government. However, if it would help, Minister Pettigrew would be prepared to have a representative from his department facilitate discussions between appropriate levels. Senator Rivest would know much better than I what level would be appropriate in the Province of Quebec. Mr. Pettigrew would be prepared to facilitate discussions between the Quebec representatives, the loans and grants programs of the Department of Education, or the appropriate department in Quebec, and representatives of the Millennium Scholarship Foundation.

I have spoken to Minister Pettigrew and he has assured me that he would be anxious to do that. Perhaps he has done that already; however, I shall make the appropriate inquiry.

MILLENNIUM SCHOLARSHIP FOUNDATION—CONSIDERATION OF PRINCIPLES ADOPTED BY QUEBEC LEGISLATURE—GOVERNMENT POSITION

Hon. Lowell Murray: Honourable senators, I have a supplementary question on that issue.

Why has the foundation rejected, if they have, the proposition put forward unanimously by the National Assembly of Quebec, under which the existing process in Quebec would be used to pick the recipients of these scholarships, the names put forward and the cheques sent out with the Maple Leaf flag on them? What is wrong with that?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the three principles were put forward, I believe, in the Gautrin motion in the Quebec National Assembly, and it was adopted unanimously by the Quebec National Assembly last May or June. My understanding is that those three principles can be respected by the legislation that created the Millennium Scholarship Foundation.

Senator Murray: How would that happen; by the foundation delegating the responsibility to the appropriate body in Quebec?

Senator Graham: I do not believe that the foundation would delegate the responsibility to the appropriate foundation in Quebec. It would be up to the foundation itself to carry on those negotiations, as I indicated in my earlier answer to Senator Rivest.

I shall make further inquiries. My understanding is that Minister Pettigrew has indicated that he will help to facilitate discussions between the foundation and the appropriate authorities in the Province of Quebec.

I do not believe that this is as big a problem as we had been led to believe.

Senator Murray: Good.

[*Translation*]

Senator Rivest: If the three principles of the resolution passed by the National Assembly are respected by the millennium scholarships program, could the minister tell us why Jean Charest and Lucien Bouchard are in total agreement to say that these principles are not respected under that initiative?

[*English*]

Hon. B. Alasdair Graham (Leader of the Government): I must pursue that further. I am at a loss to understand why they feel the three principles are not being respected when I have been assured that they can be respected by the legislation that created the foundation.

FOREIGN AFFAIRS

AIR STRIKES BY NATO FORCES IN FORMER YUGOSLAVIA—BASIS OF DECISION FOR INTERVENTION—GOVERNMENT POSITION

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate.

I do not take issue with the fact that something had to be done in Kosovo and that something should be done. We are supporting our troops 100 per cent.

As a result of the deliberations that have taken place, the minister made reference, I believe, to the fact that the decision to become involved was because of the strategic location of Kosovo in the overall structure of things, and this being possibly an area that could explode.

My question relates to something Senator Roche said when he asked on what basis future decisions will be made. Will decisions be based on the human indignities that are taking place, or are decisions made based on a strategic location? Could the minister enlighten us on how these decisions are made as to when intervention of this type will take place?

I, too, had concerns when we watched Rwanda and other horrors in the history of humanity take place and yet no one acted. Will there be a vehicle to prevent the world from standing by in scenarios such as Rwanda?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I do not think you can focus on any particular point of reference, whether it is humanitarian, or the strategic location of the country, wherever it happens to be in the world.

I believe that NATO's actions are intended to support the political aims of the international community. As I stated, our objective is to help avert a greater humanitarian crisis by ensuring that the Federal Republic of Yugoslavia complies with its obligations. These include respect for a ceasefire, an end to the violence against the civilian population, and full observance of appropriate limits on its security forces, which it agreed to last October. There is also, of course, the objective of encouraging the Federal Republic of Yugoslavia to sign a peace agreement on Kosovo.

SOLICITOR GENERAL

TREATMENT OF PROTESTORS AT APEC CONFERENCE BY RCMP—EXONERATION OF CBC JOURNALIST ON ACCUSATIONS MADE BY PRIME MINISTER'S OFFICE—STATUS OF APOLOGY FROM PRIME MINISTER'S OFFICE TO JOURNALIST—GOVERNMENT POSITION

Hon. Consiglio Di Nino: Honourable senators, my question is also directed to the Leader of the Government in the Senate.

A couple of days ago, the CBC ombudsman came up with a report totally exonerating Terry Milewski of the CBC and his coverage of the APEC situation.

For your information, you may remember that the ombudsman reacted to a letter sent by the Prime Minister's Office under the signature of Mr. Donolo, I believe it was, complaining and making some accusations against Mr. Milewski.

Now that Mr. Milewski has been totally exonerated, could the honourable minister inform us as to whether the PMO, or the Prime Minister or any of his officials, have apologized to Mr. Milewski?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am not aware of that. While the Prime Minister's Office and those responsible may not fully agree with the report, they certainly have accepted it, which I believe is appropriate.

Senator Di Nino: I have a further question on that subject. Would the minister undertake to ask, on behalf of this chamber, as to whether the PMO or the Prime Minister intends to give an apology to Mr. Milewski, which we believe is correct?

Senator Graham: Honourable senators, I always bring Senator Di Nino's representations forcefully to the attention of those who are concerned.

May I use this opportunity and go back to a question that was raised by Senator Forrestall with respect to the Aurora aircraft. I am informed that the aircraft landed safely. It was only smoke.

I am reading the note directly and I recognize the consequences of using it in the way I did.

There were 11 men on board and no one was hurt. More details, if I have them, will be given to you later.

Senator Di Nino: Thank God for that, this time.

Senator Forrestall: I wish to thank the minister for that and give him the opportunity to take away the word "only." Where do you think smoke comes from? What do you think causes smoke?

•(1500)

DELAYED ANSWERS TO QUESTIONS

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I have delayed answers to two questions. First, a response to a question raised in the Senate on March 9, 1999 by the Honourable Senator Terry Stratton regarding the refusal of Canadian bond rating agencies to restore the triple-A rating and the impact of the increasing numbers of seniors on the economy. Second, I have responses which I am delighted to provide to questions raised in the Senate on March 18, 1999, by the Honourable Senator Noël A. Kinsella and by the Honourable Senator Consiglio Di Nino regarding the Canada Customs and Revenue Agency Bill, cost of speech writing in support of legislation, application of goods and services tax.

THE BUDGET

REFUSAL OF CANADIAN BOND RATING AGENCIES TO RESTORE TRIPLE-A RATING—IMPACT OF INCREASING NUMBERS OF SENIORS ON ECONOMY—GOVERNMENT POSITION

(*Response to question raised by Hon. Terry Stratton on March 9, 1999*)

One of the best tools the government has available for meeting the challenge of an ageing population is reducing its own debt burden.

Reducing the debt-to-GDP ratio will free fiscal resources currently allocated to interest costs, and significantly increase the government's ability to manage future cost pressures.

As outlined in the Debt Repayment Plan, the government is clearly committed to lowering the debt-to-GDP ratio.

The Plan has already been a success. In 1997-98, Canada's debt-to-GDP recorded the largest yearly decline since 1956-57, falling from 70.3 to 66.9 per cent.

According to the fiscal plan set out in the 1999 Budget, the debt-to-GDP ratio will further decline to just under 62 per cent in 2000-2001.

However, the government does not favour setting either short-run or long-run debt-to-GDP targets.

In the short run, it would be very difficult to set a specific target because of fluctuations in nominal GDP, over which the government has no control. Last year for instance, the government revised its historical estimates of GDP.

A long-run debt-to-GDP target would also be problematic because there is absolutely no consensus in either the academic or business community on an acceptable long-run debt ratio.

There is a consensus that the debt-to-GDP ratio needs to continue to decline — that is what the Debt Repayment Plan is doing.

Since Canada is rated a strong Double A credit by the Canadian Bond Rating agency, any interest savings from an upgrading of our credit rating to Triple A would be marginal.

Credit ratings are only one factor in the government's cost of borrowing. More important is the level of investor confidence in Canada's economic policies and fundamentals. Investor confidence has improved significantly in recent years with the dramatic turnaround in our fiscal position, continued low inflation, and steady economic growth.

The question is complicated by the fact that Canada is rated by a number of credit rating agencies, and our rating differs slightly across agencies. Some rating agencies also rate Canada differently for domestic currency debt than for foreign currency debt. In fact, two rating agencies — Standard & Poor's and Dominion Bond Rating Service — rate Canada Triple A for domestic borrowing.

The surest way to reinstate Canada's Triple A rating is to continue to pursue the policies that this government has to reduce the level of government debt and encourage strong non-inflationary growth.

NATIONAL FINANCE

CANADA CUSTOMS AND REVENUE AGENCY BILL—COST OF SPEECH-WRITING IN SUPPORT OF LEGISLATION APPLICATION OF GOODS AND SERVICES TAX—POSITION OF CHAIRMAN

(*Response to questions raised by Hon. Noël A. Kinsella and Hon. Consiglio Di Nino on March 18, 1999*)

No speeches were prepared for Senator Carstairs, or any other Senator, using outside speech contractors.

The second reading speech, which was prepared for Senator Carstairs to deliver in the Senate on December 10, 1998, was written by employees of Revenue Canada in cooperation with the Senator's staff.

An additional question was also raised concerning the posting of the speech on the Revenue Canada web site. The speech was posted by mistake and Revenue Canada apologizes for the error. It is the Department's policy to post only the speeches of the Minister of National Revenue. The speech provided to Senator Carstairs has been removed from the web site.

ORDERS OF THE DAY

APPROPRIATION BILL NO. 1, 1999-2000

THIRD READING

Hon. Sharon Carstairs (Deputy Leader of the Government) moved the third reading of Bill C-74, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000.

Motion agreed to and bill read third time and passed.

SPECIAL IMPORT MEASURES ACT CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

BILL TO AMEND—THIRD READING

Hon. Jerahmiel S. Grafstein moved the third reading of Bill C-35, to amend the Special Import Measures Act and the Canadian International Trade Tribunal Act.

Motion agreed to and bill read third time and passed.

GOVERNMENT SERVICES BILL, 1999

CONSIDERATION IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole on Bill C-76, to provide for the resumption and continuation of government services.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I ask that His Honour now leave the Chair and that we resolve ourselves into a Committee of the Whole for clause-by-clause study of Bill C-76.

The Hon. the Speaker: I shall leave the Chair, and the Honourable Senator Stollery will take the Chair of the committee.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole, the Honourable Peter A. Stollery in the Chair.

Senator Lynch-Staunton: Mr. Chairman, before moving into clause-by-clause, I should like to ask the minister if he has any information for us after his communication with the President of the Treasury Board regarding a suggestion that was made earlier.

Senator Graham: I have secured two letters: First, from Minister Massé, directed to me, which I shall be happy to have tabled, and I have one for the Leader of the Official Opposition. It has also been copied to Mr. Daryl Bean. It is dated today and it states:

> Dear Senator Graham:
>
> My purpose in writing is to confirm that if it becomes necessary to legislate a collective agreement for the correctional groups, it will be based as a minimum on the tentative agreement that was reached on December 19, 1998 but subsequently rejected by the union membership.

I have a further letter addressed to Mr. Daryl Bean and this is from Alain Jolicoeur, the Chief Human Resources Officer, Treasury Board Secretariat, dated today. It states:

> Dear Mr. Bean:
>
> This is to confirm that the employer is prepared to accept the recommendations of the majority conciliation board report for the CX group concerning training, a compatibility study with the RCMP and to discuss the timing for the removal of the lower step at each pay level.

It is signed, "Yours sincerely, Alain Jolicoeur."

I believe those are the three points that are being raised, and I should be happy to provide copies of this letter to honourable senators.

Senator Lynch-Staunton: Perhaps we could all have copies as we go along.

Senator Graham: I only received one. Would you like to receive yours now, Senator Lynch-Staunton?

Senator Lynch-Staunton: No, I will receive mine along with everyone else.

The Chairman: Honourable senators, we shall now start clause-by-clause study of Bill C-76.

Shall the title be postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 1, the short title, be postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Senator Kinsella: On division.

Senator Murray: Mr. Chairman, I wish to speak to this clause. I have taken note of the letters that Mr. Massé has sent to my friend and that Mr. Jolicoeur has sent to Mr. Bean, copies of which have been furnished or are being furnished to honourable senators. However, I wish to place on the record my objection to proceeding in the way that is provided for in clause 7.

Parliament always embarks upon legislation of this kind with very considerable reluctance. We all know that. Nevertheless, governments must make a judgment call when they believe that the national interest would be damaged by the continuation of or the launching of an industrial action. Virtually every Parliament that I have had any experience with has had to deal with one or more pieces of legislation of this kind.

Sometimes we are in a position of imposing settlement on workers who are in the private sector but in the federal jurisdiction. That is unpleasant enough as a matter of principle. At other times, including in this situation, we are called upon to take action against a group of our own employees, people who are directly employed by the government.

•(1510)

The usual experience is that a government seeking to enact this kind of legislation presents a bill that provides for either one of two courses: First, the appointment of an arbitrator or an arbitration board, the result of which will be binding on both parties. Parliament has been asked to pass a provision of that kind. Second, less frequently it happens that the government comes to Parliament with the details of an imposed settlement and asks Parliament to pass the imposed settlement in that form.

That happened, as we were reminded, in the early 1990s when the government of the day had decided on a fiscal restraint program and, therefore, imposed a limited wage settlement within the limits of that program on the unions involved.

It is different this time in that the government is coming to Parliament and asking Parliament to give it, or the Governor in Council, the power — on the recommendation of the Treasury Board, which happens to be the employer — to impose a settlement. This morning, Mr. Massé had to acknowledge that there is no precedent for a provision of this kind in a bill of this kind.

This is a bad precedent that we are establishing today. As I say, I have seen the letters sent by the minister and his officials to the unions and copied to us. They go some distance, I suppose, to mitigating some of our concerns. However, it would have been vastly preferable for the government, if it did not want to subject the union to an arbitration process, simply to impose the settlement and to outline the settlement in detail in the legislation.

I know as I stand here that some aggressive manager, some years down the road, will come to cabinet and show them a back-to-work bill which will provide that the Governor in Council will have the power to impose a settlement. Some reluctant minister will say that it does not sound quite right, and the answer will be "The Liberals did it in 1999." That answer is always the clincher.

That is the problem with setting bad precedents of this kind. I do not intend, although others might, to propose an amendment to this clause. I simply wanted to intervene at this stage to express my concern, objection and considerable reluctance about the precedent that we are setting with this clause.

Senator Carney: Honourable senators, I would bring to your attention that, this morning, my office has received phone calls from 37 correctional officers in British Columbia about this clause. They want to have the legislation amended to include the majority decision of the conciliation report. Since they are not here to speak for themselves, they have asked me to speak for them.

It is interesting that most of these correctional officers seem to come from the Kent Institute, Chilliwack, Matsqui, Abbotsford, and New Westminster. It may be that there are aspects of this legislation that particularly affect this group of correctional officers. Possibly that problem could be identified. I can read their names into the record or, with leave, attach their names to my remarks. I am in the hands of the Chair on how to deal with that.

I do think it important that 37 people in one area of British Columbia, the Fraser River-Delta area, have such concerns about this particular clause in this piece of legislation that they took the time to call my office and ask me to intervene on their behalf.

The Chairman: With leave, I suggest that the names be attached to the record.

Senator Graham?

Senator Graham: Yes, that is perfectly agreeable.

(For text of document, see Appendix p. 2994.)

Senator Graham: On that particular point, Senator Carney, and perhaps others, have met with PSAC representatives. I personally have met with them on three separate occasions in Nova Scotia at various places. I have corresponded with them and I have returned my phone calls, every one of them. Therefore all of the representations that they have made have been duly and faithfully transferred by me to the President of Treasury Board, who is responsible for matters of this kind.

Senator Carney: With respect, how could you do that if you did not have the legislation before you? We just received this legislation.

Senator Graham: I am talking about the general representations that were made.

Senator Carney: I am not talking about general representations; I am talking about the fact that this bill, Bill C-76, which was made available to us at a very late time yesterday, has generated this concern on this specific clause from these people. Of course, since I did not have the legislation, I have notbeen able to find out what it is about this particular clause which affects these particular people.

Senator Graham: I am just making a general comment.

Senator Carney: Thank you. I am making a specific one.

[*Translation*]

Senator Rivest: I want to draw the attention of the honourable senators and of the minister to the significance of labour relations in the Canadian public service. We all believe in freely negotiated working conditions for these workers. This is probably true for some provinces. When, under the Labour Code, these workers resort to questionable means that can threaten public health and safety, the government certainly has a duty to step in. Within these parameters, I wonder how the government — which is supposed to be very liberal-minded and generous — can say, on the one hand, that it intends to honour the principle of negotiated labour relations for private sector employees and, on the other hand, in a bill, say that for public service employees, it will invoke clause, 7 whereby the Governor in Council will set both working conditions for public servants and the term during which they will apply.

There is utter incompatibility between the position, good intentions and principles the government wants to maintain and supposedly continues to believe in, and the legislation it is bringing in. In my opinion, the government has not demonstrated that there is a threat to public health and safety. There have been unfortunate inconveniences, we all agree. It is a question of judgment. The government has made a decision, but in the working conditions for the public and parapublic sectors, there are no freely negotiated working conditions. There is no longer any right to strike and to use pressure tactics to obtain a salary increase.

In view of what has been seen in the government and in other sectors, it is important to reconsider this formula. Can we ask whether the Parliament of Canada still believes, as it should, in respect and freely negotiated working conditions for all government employees? Clause 7 is a brutal measure that goes against the good intentions the government claims it wants to maintain.

[*English*]

•(1520)

The Chairman: Shall clause 7 carry?

Some Hon. Senators: Agreed.

Senator Murray: No. No; question!

The Chairman: All those in favour of clause 7?

Senator Murray: Ask them to please stand.

The Chairman: I do not think we stand in Committee of the Whole. I think the clerk must take the count

Those in favour of clause 7, please stand. We will take a count. We do not take the names down formally.

Will those who oppose clause 7 please rise now? Are there any abstentions?

Those in favour of clause 7, 30; those opposed, 26.

I declare clause 7 carried.

Shall clause eight carry?

Hon. Senators: Carried.

The Chairman: Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 11carry?

Hon. Senators: Carried.

The Chairman: Shall clause 12 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 13 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 14 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 15 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 16 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 17 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 18 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 19 carry?

Hon. Senators: Carried.

The Chairman: Shall Clause 20 carry?

MOTION IN AMENDMENT NEGATIVED

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Mr. Chairman, I move that Bill C-76 be amended in clause 20, on page eight,

(*a*) by replacing lines 10 to 26 with the following:

20(1) The Governor in Council shall prescribe the terms and conditions of the employment for the employees based upon the majority decision outlined in the *Report of the Conciliation Board to the Chairperson of the Public Service Staff Relations Board* in respect of employees of the employer in the Table 4 bargaining units, namely the Corrections Group (Supervisory and Non-Supervisory);

(*b*) by replacing lines 27 and 28 with the following:

(2) The terms and conditions prescribed under subsection (1) constitute a new; and

(*c*) by renumbering subsections (4) to (6) as subsections (3) to (5) and any cross-references thereto accordingly.

The Chairman: May I have a copy of the amendment, Senator Kinsella?

Senator Kinsella: Yes. It is coming to the table now.

The Chairman: I have the motion in amendment. I do not think we have to distribute it.

Senator Kinsella: I would like to speak to the motion in amendment.

Honourable senators, as we learned in Committee of the Whole, not only is the provision unprecedented — as the earlier clause over which we had a debate and vote on is unprecedented — but, unlike clause 1 of the bill, that clause has an agreement between the parties that was agreed to late the other evening. The expectation is — and I think that honourable senators cantake the word of the President of the Treasury Board as the employer and the representatives from the bargaining unit — that that agreement for the Part 1 people, namely, the general workers, will probably be ratified.

The difficulty with the employees affected by Part 2 of this bill is that we have no idea as to what the terms of settlement would be other than the general letter that we have received, which provides some parameters. However, the process that is provided for is offensive to International Labour Organization conventions. I also think that it is offensive to a pretty important Canadian value, namely, the value that when we interfere with a right of Canadians by using the power of the state, we do so in a fashion that is surgical like and with minimal impact. If the state is to make this interference with the bargaining rights of Canadian workers in this instance, then it should not be given the sledge-hammer to slaughter the proverbial mosquito.

The other element is the conciliation board, which operated as a third party, and examined and heard the representations from both sides. That matter is there. The contract is terminated in June. We, as parliamentarians, should exercise that third party function to maintain a degree of fairness in the collective bargaining process within public sector bargaining.

This amendment speaks directly to the contract that the conciliation board, having heard the parties, determined to be the fair way of proceeding. The distance between what was presented by the government, as the employer, at the table during negotiations is not that great. I think that we would be doing the right thing in the interests of fairness by amending this bill to provide for some specificity as to what the collective agreement should be.

Senator Lynch-Staunton: I will take advantage of the amendment to make a comment. I wonder whether the government is putting salt in the wounds or deliberately provoking its civilian employees because today as we are in the last stage of discussion on the back-to-work legislation, the government announced pay hikes for the military ranging from 14.4 per cent to 18.1 per cent. I wonder why today, of all days, was chosen to announce that. Privates will get an increase of 14.4 per cent; other non-commissioned members 17.28 per cent; most second lieutenants and lieutenants 18.1 per cent; captains, majors, lieutenant-colonels 12.05 per cent retroactive to April 1, 1997; and their environmental allowances, for example, sea pay, sea operations allowance and air crew allowance, will increase by 16.84 per cent.

•(1530)

Here, we are talking about a group of employees who have not seen any collective bargaining for years and who have had their wages frozen since 1991, except for some minor adjustments. We are looking at 2 or 3 or 4 per cent. Yet they look across where there are no negotiations and see a substantial body of

employees, called the Armed Forces, getting these deserved, no doubt, increases of 14.4 per cent. The government is creating categories of employees and segregating them accordingly. I find that reprehensible.

It is more reprehensible that this should be announced on the very day that this legislation is being discussed. To me, it is nothing more than undue, unwanted, and unwarranted provocation which can only sour employee-employer relations.

The Chairman: Thank you. I will put the motion. All those in favour of the motion in amendment, please rise. All of those opposed to the motion in amendment, please rise.

Thank you very much. You may take your seats. On the motion, yeas 26, nays 35. I declare the motion lost.

Senator Lynch-Staunton: Were there any abstentions?

The Chairman: Were there any abstentions? I forgot to ask. It is not a procedure used much in the House of Commons, and I did not think of it. I declared the motion lost.

Shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 22 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 23 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 24 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 25 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 26 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 27 carry?

Hon. Senators: Carried.

The Chairman: Shall Schedule 1 carry?

Hon. Senators: Carried.

The Chairman: Shall Schedule 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 1, the short title, carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Peter A. Stollery: Honourable senators, the Committee of the Whole, to which was referred Bill C-76, to provide for the resumption and continuation of government services, has examined the said bill and has directed me to report the same to the Senate without amendment.

Some Hon. Senators: On division.

THIRD READING

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. B. Alasdair Graham (Leader of the Government): With leave, now.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Edward M. Lawson: Honourable senators, I wish to propose an amendment. I can understand what prompted the government to initiate the back-to-work legislation. I can understand the concern for the farmers and the grain workers and so on, but that has been dealt with by the unions. They gave an undertaking of no more picketing against the farmers.

When this back-to-work legislation arrived in the House of Commons and the minister announced that, as a result of collective bargaining, a tentative agreement had been reached, the back-to-work legislation should have stopped right there. It ceased to be back-to-work legislation when it proceeded further, and it became a direct assault on the union, and a frontal assault on free collective bargaining.

I propose this amendment more out of disappointment than anger. I have heard many members opposite, including the Prime Minister and former prime minister Trudeau, make passionate defences of free collective bargaining. I was invited to a meeting with Prime Minister Pearson when he was considering and consulting about granting bargaining rights to postal workers. At that meeting, many recommended yes, and many recommended vigorously no. Prime Minister Pearson said that the policy of the Liberal Party and this government is free collective bargaining, and he implemented collective bargaining.

Honourable senators, we have here an unprecedented piece of legislation, a dangerous precedent, an attack on the union, and an assault on free collective bargaining. I think the minister has lost his way, and I am afraid the Liberal government on this occasion has either been misled or lost its way. There is no need for this legislation.

We have a commitment. You heard Mr. Bean from PSAC this morning say that they are recommending it, and that in one week, if this legislation was suspended, he would have approval from his membership. Why would you risk a dangerous precedent like this when it is unnecessary? Give collective bargaining a chance to work.

MOTION IN AMENDMENT NEGATIVED ON DIVISION

Hon. Edward M. Lawson: Honourable senators, in an attempt to help my friends in the Liberal Party and the government, I move, seconded by the Honourable Senator Cochrane:

> That the bill be not now read the third time but that it be read the third time this day three months hence.

I am told by the Table Officers here that the matter can either be referred to committee for three months or six months. I want enough time for the union, which has given a good faith commitment, to recommend it to their members and to allow collective bargaining to work without this terrible blot on the record of the government and this attack on free collective bargaining.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

The Hon. the Speaker: Will those in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: As I hear it, the "nays" have it.

And two honourable senators having risen.

The Hon. the Speaker: Please call in the senators. Is there agreement on the length of the bell? The whips tell me the bells should ring for 30 minutes, so the vote will take place at 4:10 p.m.

•(1610)

Motion in amendment of Senator Lawson negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Atkins	Lavoie-Roux
Balfour	Lawson
Beaudoin	LeBreton
Buchanan	Lynch-Staunton
Carney	Murray
Cochrane	Oliver
Cogger	Prud'homme
DeWare	Rivest
Di Nino	Roberge
Doody	Rossiter
Forrestall	St. Germain
Keon	Tkachuk
Kinsella	Wilson—26

NAYS

THE HONOURABLE SENATORS

Adams	Kroft
Bacon	Losier-Cool
Bryden	Maheu
Butts	Maloney
Callbeck	Mercier
Carstairs	Milne
Chalifoux	Moore
Cook	Pearson
Cools	Perrault
Corbin	Poulin
Ferretti Barth	Robichaud (*L'Acadie-Acadia*)
Fitzpatrick	
Fraser	Robichaud (*Saint-Louis-de-Kent*)
Grafstein	
Graham	Rompkey
Gustafson	Sparrow
Hays	Stewart
Hervieux-Payette	Stollery
Johnstone	Taylor
Joyal	Watt—38

ABSTENTIONS

THE HONOURABLE SENATORS

Nil.

The Hon. the Speaker: I declare the motion in amendment lost.

The question before the Senate now is on the main motion. Does any other honourable senator wish to speak on the main motion?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, before we vote on the main motion, I should like to address a couple of points.

First, with respect to the operational or blue-collar workers, this legislation is still needed, even though an agreement has been reached between the Treasury Board and the PSAC leadership.

As I explained yesterday, and as Mr. Massé reiterated today, until that agreement is ratified by the membership, the members have the legal right to continue the strike activity they have been engaged in since January. Thus, this legislation is needed to ensure that work stoppages do not continue during the ratification period. In fact, since the agreement was reached on Tuesday evening, strike activity has intensified.

For example, yesterday, there was picketing at DND bases at Halifax and Greenwood; and there were 150 pickets at Base Valcartier. There was also heavy picketing at many correctional facilities. In the Atlantic, pickets were set up at the Dorchester maximum security facility, the Westmoreland minimum security facility, and the Springhill medium security facility. In the province of Quebec, there were pickets at the Laval complex, which comprises three institutions, maximum, medium and minimum security, at the Cowansville medium security facility, and at the Drummondville medium security institution.

On the Prairies, there were pickets set up at the Saskatchewan Penitentiary, which is a maximum security institution, the Riverbend institution, which is minimum security, Edmonton institution, which is maximum security, and the Bowden institution, which is medium security.

The strike activity and picketing to which I refer was not being conducted by correctional workers but by operational workers, some of whom are employed inside the institutions.

There was also heavy picketing at Revenue Canada offices in the following locations: St. John's, Newfoundland; Sydney, Nova Scotia; Jonquière, Quebec; London, Ontario; Winnipeg, Manitoba; Vancouver, B.C.; and Victoria, B.C. In fact, in Victoria, more than 300 pickets blocked access to Revenue Canada offices, notwithstanding a court order to limit picketing.

There was even picketing yesterday, as was mentioned earlier, at Dorval airport.

The rotating strikes by operational workers, which have caused serious disruptions across the country, are continuing. They have intensified and will undoubtedly continue if this legislation is not passed or if it is suspended.

The second issue I want to deal with is the position of correctional workers. As we all know, correctional workers will be in a legal strike position at midnight tomorrow. The provisions of Bill C-76 ordering them back to work do not automatically come into effect at the time of Royal Assent. They will only come into force through an Order in Council, and that Order in Council will only be made if conditions warrant it.

What I mean by that is this: If the correctional workers remain at the bargaining table instead of initiating strike action, the Order in Council will not be sought. However, if they initiate strike activity at a correctional institution that puts the public at risk, or other employees or inmates at the institutions in danger, then the back-to-work provisions will be triggered by an Order in Council.

Senator Lawson has suggested that the legislation be suspended at this time. I have great respect for Senator Lawson's opinions in matters of this kind. However, what I am indicating is that the provisions respecting correctional workers will be suspended or not be put into effect until and unless needed, and that is up to the workers themselves. If there is no strike activity that would result in a dangerous situation, the provisions will not be triggered, negotiations will continue and, hopefully, a negotiated agreement will be reached.

Honourable senators, we have heard how the correctional workers are asking that the conciliation report that dealt with their situation be fully implemented. There have even been suggestions by witnesses that Bill C-76 be amended to incorporate that conciliation report.

The government cannot agree to this because it cannot accept the conciliation report, although it is prepared to use it as a basis of discussion for some of the issues under negotiation.

I want to emphasize that our rejection of the conciliation report is in no way, shape or form an indication of bad-faith bargaining. It is quite normal for one or even both parties in a labour dispute to reject a conciliation report.

•(1620)

Let me give honourable senators a pertinent, current example of this. The Public Service Alliance rejected the conciliation report issued on December 8, 1998 with respect to the blue-collar workers. Negotiations continued, and the end result was an agreement reached earlier this week which, according to Mr. Bean himself, was more generous for his members than what was called for in the conciliation report. Therefore, I want to emphasize again, honourable senators, that it is not a sign of bad faith when one of the parties rejects a conciliation report. It is part and parcel of the normal collective bargaining process.

While I am on my feet, I should also mention that, under this legislation, a negotiated agreement will always take precedence. Clauses 7(6) and 20(6) make it clear that if there is a negotiated settlement between the parties, the provisions in the bill allowing the imposition of a collective agreement are spent and have no effect or force. The government's preference is a negotiated agreement, and the legislation reflects that.

Honourable senators, this legislation was originally introduced to deal with a very difficult situation. Notwithstanding the agreement reached with blue-collar workers on Tuesday, the situation remains very difficult, particularly in the short term. I believe that we as legislators would not be fulfilling our responsibilities if we allowed the Senate to adjourn without first adopting this legislation.

Hon. Edward M. Lawson: Honourable senators, I accept the statement of the Leader of the Government that it is not bad faith bargaining for either side to reject a conciliation report. However, that is not the primary issue. When the union and the employer agreed on a tentative settlement, that was good faith bargaining — although it may have been influenced by the threat of back-to-work legislation — and the legislation should have been withdrawn.

I have been involved in many strikes and know of the emotions of working people. When the government said that, notwithstanding the tentative agreement arrived at, it was still going to hammer the workers with this legislation, it attacked the integrity of the membership and the leadership. What option does that leave the workers for venting their anger other than to do what they are doing?

Based on my experience, I can say that, had the government accepted in good faith the agreement that was arrived at and withdrawn the legislation, the work stoppages and picketing would have largely, if not totally, disappeared.

At any time throughout our history, had such an opportunity for a settlement presented itself, the Minister of Labour would have quickly withdrawn the legislation. I think the government has done irreparable damage to future bargaining relations between workers and the government. I give you that caution.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I wish to make a correction. I do not think Mr. Bean said that the tentative settlement was better than the settlement recommended in the conciliation report rejected by the union. He said that it was better than the settlement imposed by this bill.

Could the Leader of the Government clarify for us the status of the 728 designated correctional workers? We have been receiving conflicting evidence on this. This morning we were told that it was caused by administrative difficulties, that in effect it was a mistake and that the 728 should have been categorized as designated. Later, Mr. Bean said, and this was more or less confirmed by the representative of the correctional officers, that there had been an agreement signed by the government and the union formalizing the status of the 728 as non-designated correctional officers.

There is a contradiction there. The employer says it is the result of confusion, poor administration, and paper work. Mr. Bean showed us a document, which he said had been signed by both parties only a few days before, identifying and confirming the 728 as non-designated correctional officers.

Could the Leader of the Government tell us exactly what their status is? If the document was signed, why is the government now reneging on it?

Senator Graham: It is my understanding that it was an administrative error.

Senator Lynch-Staunton: If that is so, what is the validity of a document which Mr. Bean showed us which he said listed 728 positions, if not names, being confirmed as non-designated correctional officers, which was signed only a few days before by the Government of Canada and the union? That is not an administrative error.

Senator Graham: That is my understanding, honourable senators. I will have to seek further clarification on that. I do not know that it affects what we are talking about here now, but it deserves clarification. My understanding is that it was an administrative or clerical error.

Senator Lynch-Staunton: I would appreciate it if the leader would look into that. It does affect what we are talking about. If those 728 positions had been declared designated, we would not have Part 2 of the bill. Part 2, which is extraordinarily Draconian, takes away the right to strike from those who have yet to exercise it and lumps others who have the right to strike in with those who will have the right to strike removed. It also instructs the Treasury Board to impose a settlement unilaterally without consultation. That is what Senator Lawson is talking about. That is unheard of.

We have this comfort letter which sets out the basis of the settlement. The 728 are captured by the most Draconian back-to-work legislation we have ever seen, that being Part 2 of this bill. It is important to have that clarified because I suspect that it is much more than an administrative error.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, the process in the house, when you wish to ask a question of the person who has spoken, is that you ask it immediately after he or she speaks. Senator Graham spoke, then Senator Lawson spoke. Thereafter, Senator Lynch-Staunton rose and asked questions of Senator Graham, who was not the last speaker.

Are we going to follow the rules this afternoon or are we going to change them?

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I wish to ask a question of Senator Graham. Senator Lynch-Staunton got up to do that very thing and Senator Lawson was recognized. Thereafter, Senator Lynch-Staunton asked his questions. I still wish to ask questions of Senator Graham.

In his speech at third reading debate, Senator Graham stated that the government had reasons for rejecting the majority conciliation board report affecting the correctional officers. Could the Leader of the Government in the Senate tell the house what reasons the government had for rejecting that report?

Senator Graham: Honourable senators, the reason for the rejection was that the government thought the deal was a little rich. Originally, the correctional services people had been asking for increases in the range of 17 to 19 per cent. As I explained in my third reading speech, it is normal for either side to reject the report of a conciliation board, but it could certainly form a good basis for further negotiation.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I would like to speak at third reading. The problem with the Senate, I think, is that it rarely listens to what people of experience have to say. I do not feel compelled to make long speeches on every issue. For example, if we discuss certain international topics, I listen to those who, in my mind, may have some international experience. If we discuss transportation issues, I listen to the chair of the Committee on Transport, to people whom I trust. I may sometimes make mistakes, but not in the case of Senator Bacon. If we are talking about the first nations, I always listen to what Senator Adams, Senator Watt and our good friend, Senator Chalifoux, may have to say. This is what the Senate is all about. So, I will spare you a very long speech on these legal issues.

[*English*]

•(1630)

The speech could be very long, as the rules allow, but having trusted many senators for their knowledge, I will not repeat what has been better said. I do not think I could ever put it better than has Senator Lawson. That is my speech. I want to be on the record as fully sharing his view.

Senators must learn to be relaxed with each other with respect to the way we vote and the way we put forward our opinions. That is the beauty of the Senate.

I was impressed by some of the interventions I was able to catch today. I have just arrived from a full briefing by all the Arab diplomats on the visit of Chairman Yasser Arafat. There is so much we could learn by listening to them instead of listening to what I have to say on this bill.

Again, I fully share the views expressed by Senator Lawson. That is the reason I voted the way I did, and that is the reason I will vote with the majority on third reading. I can see what will happen. If some people are nervous, be careful, because the rules state that we could sit tomorrow.

My honourable colleague says that I may be sitting alone. Be careful. Someday I may force my honourable friend to sit alone, too. However, I will not go that far in using the rules.

Thank you, again, Senator Lawson for sharing with us your great experience.

Hon. John G. Bryden: Honourable senators, I am not speaking as an expert in this area, but I suggest that there is another side to what Senator Lawson has said. We have both been at the bargaining table many times. On my part, I sometimes represented my friend's organization. However, there are some interesting facts here. There is no guarantee that people will always act in good faith.

My honourable friend suggested that if the government had acted differently and said, "We have a tentative agreement, so let us stop everything and take our two-week break," it would have been an act of good faith. Everyone would have stopped picketing and there would have been no more threats. I have been in situations where that has happened and, indeed, the result has been similar to what my honourable friend has indicated. I have also been in situations where that good-faith action has taken place by the bargaining agent and the employer, and the good result did not occur.

Honourable senators, in this situation, we already have evidence that a bargaining unit that I believe is a subsection of PSAC — the correctional officers — negotiated in good faith and entered into a tentative agreement with the employer. Their leadership and the negotiating team recommended to the membership that they accept the agreement, and the membership rejected it.

Mr. Bean, in all good faith, I am sure, sat here and said, "We have entered into a tentative agreement, and we are prepared to recommend acceptance of that tentative agreement to our membership." When asked, he said, "I am optimistic," or words to that effect, "that our recommendation will be accepted." I did not ask Mr. Bean if he would be prepared to bet his position on it, because that would have been unfair. What is more, he would not be expected to do that because the union organization is a democracy, and the membership is entitled to have the last word.

I suggest that it takes two sides to make an agreement and two sides to bargain in good faith. We often get to this stage in a dispute when two parties have a long history.

Honourable senators, the employer and the union must exercise their best judgment at the eleventh hour, whatever brought the eleventh hour around. My view is that the government, separated from the employer, on the basis of the facts and what they had before them, must act in the best interests of the public. However, there are times when — with all due respect to the free collective bargaining system we all endorse — the public interest must take precedence and we must protect the public interest.

Senator Lawson has an opinion as to how that might best have been done, to protect the collective bargaining tradition. My intervention at this point is to say that there are other considerations. If, in fact, the situation had worsened, and if, in fact, PSAC members reject this tentative agreement rather than ratify it, then the unsettled situation we have could very well continue for a further period of days, weeks or months before it is resolved.

Is my honourable friend right, honourable senators? I do not know. I merely wish to ensure that this chamber understands there are no guarantees that people will always act in good faith and in the best interests, even of their own membership sometimes.

Hon. Gerry St. Germain: Honourable senators, I have a question for Senator Bryden.

Senator Lawson indicated that a three-month delay was a necessity and that we could not delay the bill for a month. That is my understanding. I believe this is the procedure, but I stand to be corrected by someone who may have more experience in this area.

Honourable senators, there is a trust factor in all of this. As one who has negotiated and represented labour in the past — not to the extent that Senator Lawson has or Senator Bryden has in his life as a lawyer — I can tell my honourable colleagues one thing: I have never received as many phone calls on a bill — other than Bill C-49, with respect to which I am being inundated with correspondence — as I have with Bill C-76. The trust factor is comparable to that between a man and a woman in a marriage. In other words, the same trust factor exists between employer and employee in these negotiations.

If my friend feels that these rotating strikes have been going on for a considerable period of time and that the public interest is at risk, I believe we could have delayed implementation, which would have shown good faith; yet, had they not ratified the negotiated settlement that is on the table, we would not have lost faith with the working men and women of this country. We would not have undermined the right to strike or the right to negotiate.

I think the three-month timeline was raised through necessity, but we possibly could have delayed this one month or two or three weeks. I believe Mr. Bean said it would take him two weeks to ratify this agreement. I ask my honourable friend for his comment on that.

Senator Bryden: I will comment on it, honourable senators.

I am not sufficiently familiar with the circumstances and the details. Senator St. Germain referred to a relationship of faith, much like that between a husband and a wife. Faith such as that, or the breach of it, is often built up over a period of time. I do not know, as we in this chamber do not know, all of the circumstances that brought this situation to where it is today.

•(1640)

Many of the points the honourable senator made are valid considerations. However, as someone who has worked in the field and someone who is now a member of Parliament, I am not prepared to try to substitute my judgment on my limited appreciation of the particular facts in this instance for the judgment of the government.

Hon. Leonard J. Gustafson: Honourable senators, I feel that I should say a few words here.

The strike of the gain handlers came at a very difficult time for farmers. We had a very difficult winter. Our elevators were plugged and in many places still are. It seems that the grain handlers have chosen to strike at a time which is most difficult for the farmers. I understand there are seven ships waiting to be loaded. This will cost the farmers demurrage. On top of that, our farm economy in the grain sector is probably in one of the worst conditions it has been for several years.

I have no alternative today, honourable senators, but to support ordering the government employees back to work. I question why the union would pick a time when things are difficult for agriculture, particularly with the movement of grain. My actions here today are based on that thinking.

Senator Lawson: May I respond to Senator Bryden?

The Hon. the Speaker: I am sorry, Senator Lawson, you have already spoken.

Unless any other honourable senator wishes to speak I will proceed with the third reading motion.

With leave of the Senate, and notwithstanding rule 59(1)(*b*), it was moved by the Honourable Senator Graham, seconded by the Honourable Senator Carstairs, that this bill be read a third time now.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Shall I say on division?

Some Hon. Senators: On division.

Motion agreed to and bill read third time and passed, on division.

[*Translation*]

ROYAL ASSENT

NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

March 25, 1999

Mr. Speaker,

I have the honour to inform you that the Honourable John Major, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 25th of March, 1999, at 5:00 p.m., for the purpose of giving Royal Assent to certain bills.

Yours sincerely,

Judith A. LaRocque
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

[*English*]

FOREIGN PUBLISHERS ADVERTISING SERVICES BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, seconded by the Honourable Senator Perrault, P.C., that Bill C-55, An Act respecting advertising services supplied by foreign periodical publishers, be referred to the Standing Senate Committee on Transport and Communications

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, yesterday I took the adjournment of the debate on the motion for referring the bill to committee. I wish to make a couple of remarks.

From the standpoint of this side of the chamber, we are anxious to see that that legislation be assigned to a committee today. I was pleased that all honourable senators who participated in the debate yesterday manifested a great interest in the legislation. It speaks to the importance of the bill and it also speaks to the complexity of the bill in that it involves very serious trade dimensions. There are also very serious communication and cultural issues associated with it, as well as very important legal and constitutional questions.

Honourable senators, Senator Carstairs and I did utilize the usual channels to consult on this matter, and we are of the common view that if as many senators as possible study in detail the various dimensions of that bill, it can only result in a better examination of the legislation.

For this side, honourable senators, being anxious as we are that the bill go to committee today, we recognize that there is, indeed, in the rules certainly the tradition that all honourable senators have, as a matter of right, the right to attend any committee examining legislation and to express their views. We hope that all honourable senators who have this interest and have special areas of expertise, whether in the area of banking and commerce or in the area of trade, or in the area of constitutional law and rights, or in the area of communications and culture, will come to the Transportation Committee meetings and and lend that expertise to us.

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Perrault, that the bill be referred to The Standing Senate Committee on Transport and Communications.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before we leave this item, and so that in the future we might be guided by our rule book, I refer you to rule 62(1)(*i*). It reads:

> Except as provided elsewhere in these rules, the following motions are debatable:
>
> (*i*) for the reference of a question other than a bill to a standing or special committee.

In other words, the reference of a bill is not a debatable motion. Therefore, we should have been engaged in the exercise we have been through, according to our rule book. I only raise that point for future consideration.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRTY-SECOND REPORT OF COMMITTEE ADOPTED

On the Order:

> Consideration of the thirty-second report of the Standing Committee on Internal Economy, Budgets and Administration (Security Accreditation Policy), presented in the Senate on March 23, 1999.— (*Honourable Senator Rompkey, P.C.).*

Hon. Bill Rompkey moved the adoption of the report.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I ask for some explanation of what is in this report.

Senator Rompkey: Honourable senators, I do not have the report in front of me, but I assume this is the security report that we are talking about. All we are really doing is ensuring that everyone abides by the guidelines and the regulations, and that is to ensure that there are security checks before people are employed.

Motion agreed to.

[*Translation*]

PRIVILEGES, STANDING RULES AND ORDERS

CONSIDERATION OF NINTH REPORT OF COMMITTEE— DEBATE CONTINUED

On the order:

> Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Ferretti Barth, for the adoption of the ninth report of the Standing Committee on Privileges, Standing Rules and Orders *(independent Senators)* presented in the Senate on March 10, 1999.—*(Honourable Senator Robertson)*.

Hon. Marcel Prud'homme: Honourable senators, on behalf of Senator Robertson, I would appeal to the leadership of both parties to try to listen to us so that a decision can be taken on this issue, which has dragged on for too long.

[*English*]

I shall give no speech today. I have five prepared for today and that is the second I shall not deliver.

I would hope that leadership on both sides will come to terms. I know a vigorous exchange took place between honourable senators, but I think that is behind us now. Eventually, we should take a decision on this issue. In my case, this has been dragging on for almost six years. New senators, such as Senator Wilson and Senator Roche, are very eager to participate in the work of committees, as is Senator Lawson, as we saw today.

I am making an appeal to Senator Lynch-Staunton and Senator Carstairs to see if something could be done to dispose of this item as soon as possible. I am ready to speak with Senator Robertson on this issue.

On motion of Senator Kinsella, for Senator Robertson, debate adjourned.

EXCISE TAX ACT

BILL TO AMEND—CONSIDERATION OF REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Cochrane, for the adoption of the fifteenth report of Standing Senate Committee on Social Affairs, Science and Technology (Bill S-10, to amend the Excise Tax Act, with an amendment) presented in the Senate on December 9, 1998.—(*Honourable Senator Carstairs*).

Hon. Consiglio Di Nino: Honourable senators, today is the eleventh day that this item has been standing in the name of Senator Carstairs. I was wondering if Senator Carstairs could inform me when she, or someone else from her side, would be responding to this item.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, it was my intention to speak this week. However, I am afraid that I have been somewhat tied up with other problems and I will speak on this matter as soon as we come back from the break.

On motion of Senator Carstairs, debate adjourned.

REVIEW OF NUCLEAR WEAPONS POLICIES

MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Lavoie-Roux:

That the Senate recommend that the Government of Canada urge NATO to begin a review of its nuclear weapons policies at the Summit Meeting of NATO April 23-25, 1999.—(*Honourable Senator Roche*).

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, we have taken a careful look at this motion by Senator Roche and our caucus has decided that we should support this motion.

On motion of Senator Di Nino, debate adjourned.

SEXUAL ASSAULT

RECENT DECISION OF SUPREME COURT OF CANADA—INQUIRY—DEBATE SUSPENDED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate:

(*a*) to the judgment of the Supreme Court of Canada in the sexual assault case *Her Majesty the Queen v. Steve Brian Ewanchuk*, delivered February 25, 1999, which judgment reversed the Alberta Court of Appeal's judgment upholding the trial court's acquittal;

(*b*) to the intervenors in this case, being the Attorney General of Canada, Women's Legal Education and Action Fund, Disabled Women's Network Canada and Sexual Assault Centre of Edmonton;

(*c*) to the Supreme Court of Canada's substitution of a conviction for the acquittals of two Alberta courts;

(*d*) to the lengthy concurring reasons for judgment by Supreme Court of Canada Madame Justice Claire L'Heureux-Dube, which reasons condemn the decision-making of Mr. Justice John Wesley McClung of the Alberta Court of Appeal and the decision of the majority of the Alberta Court of Appeal;

(*e*) to Mr. Justice John Wesley McClung's letter published in the *National Post* on February 26, 1999, reacting to Madame Justice L'Heureux-Dube's statements about him contained in her concurring reasons for judgement;

(*f*) to the nation-wide, extensive commentary and public discussion on the matter; and

(*g*) to the issues of judicial activism and judicial independence in Canada today.—(*Honourable Senator Grafstein*).

Hon. Jerahmiel S. Grafstein: Honourable senators, Senator Cools has done the Senate and the country an undeniable service by comprehensively questioning the role of the judiciary. Of course, by doing so she also raises the question of the role of the Senate. Both the judiciary and the Senate in the current public debate suffer from public confusion and carelessness both within the judiciary itself and within Parliament. Confusion is aided and abetted by an almost always less than informed media.

Honourable senators, let me review the significant parallels and differences that exist between the Senate and the judiciary. Both judges and senators are appointed by ministers of the Crown. By practice, precedent and convention, senators are appointed as a matter of prime ministerial prerogative, as are members of the Supreme Court of Canada, chief justices of the provincial courts, the Federal Court and of course, other judges are appointed upon the advice and consent within the cabinet as a whole.

However, different considerations pertain to judges and senators. Both have different law-making powers. In the case of judges, by convention and practice the Prime Minister now seeks advice from the bar and, less transparently, from judges themselves. In the case of senators, the Prime Minister seeks to satisfy his demographic, gender, regional and political concerns. Both the Senate and judges are, by the tenure of their constitutional appointments, accorded independence. Once accorded that independence, they take on entirely different public duties.

Under the Constitution and by convention, senators are invited to be actively involved in their region and their community and are free to engage in politics to better reflect their regional and national concerns. They are invited to burnish their special expert skills and diverse experience with respect to legislation. Appointments to the Senate are meant to add a different dimension to Parliament. Their appointment allows them to set themselves apart, to give sober second thought, independent of the other place, to the public will as illustrated by legislation from the other place.

Under the Constitution, and by convention, senators are entreated to diverge on substantive matters. They are encouraged to diverge on public policy if it appears contrary to the national interest. Thus was the vision of the founding fathers of Confederation.

While the independence of the Senate creates a different dimension of public scrutiny, the Senate is accountable to the other place through its requests for its annual budget. Always the Senate remains open to scrutiny; always the Senate is also open to substantive criticism if the Senate amendments to legislation are not approved by the other place.

Conflict between the Houses of Parliament is inevitable while providing a formula for consensus. The more independent its review of government policy and legislation, the greater the criticism from the government, the other place and the media.

The Hon. the Speaker: Honourable senators, I shall now leave the Chair to await the arrival of His Excellency, the Deputy of the Governor General.

Debate suspended.

The Senate adjourned during pleasure.

[*Translation*]

ROYAL ASSENT

The Honourable John Major, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Railway Safety Act and to make a consequential amendment to another Act (*Bill C-58, Chapter 9, 1999)*

An Act to amend the War Veterans Allowance Act, the Pension Act, the Merchant Navy Veteran and Civilian War-related Benefits Act, the Department of Veterans Affairs Act, the Veterans Review and Appeal Board Act and the Halifax Relief Commission Pension Continuation Act and to amend certain other Acts in consequence thereof (*Bill C-61, Chapter 10, 1999*)

An Act to amend the Federal-Provincial Fiscal Arrangements Act (*Bill C-65, Chapter 11, 1999*)

An Act to amend the Special Import Measures Act and the Canadian International Trade Tribunal Act (*Bill C-35, Chapter 12, 1999*)

An Act to provide for the resumption and continuation of government services (*Bill C-76, Chapter 13, 1999*)

An Act to amend the Access to Information Act (*Bill C-208, Chapter 16, 1999*)

An Act to amend the Act of incorporation of the Roman Catholic Episcopal Corporation of Mackenzie (*Bill S-20*)

The Honourable Peter Milliken, Deputy Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

May it please Your Honour:

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bills:

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1999 (*Bill C-73, Chapter 14, 1999*)

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000 (*Bill C-74, Chapter 15, 1999*)

To which bills I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the said bills.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

[*English*]

•(1710)

The sitting of the Senate was resumed.

SEXUAL ASSAULT

RECENT DECISION OF SUPREME COURT OF CANADA—INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate:

(*a*) to the judgment of the Supreme Court of Canada in the sexual assault case *Her Majesty the Queen v. Steve Brian Ewanchuk*, delivered February 25, 1999, which judgment reversed the Alberta Court of Appeal's judgment upholding the trial court's acquittal;

(*b*) to the intervenors in this case, being the Attorney General of Canada, Women's Legal Education and Action Fund, Disabled Women's Network Canada and Sexual Assault Centre of Edmonton;

(*c*) to the Supreme Court of Canada's substitution of a conviction for the acquittals of two Alberta courts;

(*d*) to the lengthy concurring reasons for judgment by Supreme Court of Canada Madame Justice Claire L'Heureux-Dubé, which reasons condemn the decision-making of Mr. Justice John Wesley McClung of the Alberta Court of Appeal and the decision of the majority of the Alberta Court of Appeal;

(*e*) to Mr. Justice John Wesley McClung's letter published in the *National Post* on February 26, 1999, reacting to Madame Justice L'Heureux-Dube's statements about him contained in her concurring reasons for judgement;

(*f*) to the nation-wide, extensive commentary and public discussion on the matter; and

(*g*) to the issues of judicial activism and judicial independence in Canada today.—(*Honourable Senator Grafstein*).

Hon. Jerahmiel S. Grafstein: Honourable senators, I continue my remarks from where I left off.

The more independent the Senate's review of government policy and legislation, the greater the criticism of the Senate from the government, the other place and the relentless media. Such is the fate of the Senate all because of the constitutionally entrenched appointment process.

Honourable senators, I digress. I meant to focus on the role of the judiciary as raised by our colleague Senator Cools, especially in the post-Charter world after the 1982 Constitution. Critics of the 1982 Constitution have found evidence of their most dire predictions in recent actions of the judiciary. Rather than essentially retaining the theory of the supremacy of Parliament, the 1982 Constitution empowered the judiciary with preserving the administration of justice and granting carefully prescribed powers respecting the Charter. However, the notwithstanding power in section 33 still rests with Parliament.

•(1720)

In that sense, Parliament continues to reign supreme. Of course, Parliament has the full power to override the judiciary by legislation on questions unrelated to the Charter. Meanwhile, settling disputes on the division of powers remains a paramount judicial responsibility.

Advocates of greater judicial power have gone further than the 1982 Constitution. Judicial advocates have lobbied for constitutionalizing the Supreme Court. This would have been the outcome of both the Meech Lake and Charlottetown constitutional proposals, which were happily defeated. Two trends, excessive political advocacy by judges that mark territory beyond the Constitution and lobbying for constitutionalization as a completely independent branch of government, have led in a strange way to the deplorable expansion of injudicious judicial public musing, lobbying and, worse, intemperate judicial conduct manifested in the advocacy language within decisions and with comments made by judges off the bench.

Why is this unacceptable under our carefully structured system of responsible government? Let me start by reading the careful words of an old friend and constitutional expert, Peter Russell of the Department of Political Science at the University of Toronto. In his article of some years ago entitled, "Judicial Free Speech: Justifiable Limits," Professor Russell wrote the following:

> The very core of free speech in a democratic society is the right to engage in public debate on the political issues of the day. Surely at the heart of democratic citizenship are political advocacy and dissent, putting forward one's own political ideas and criticizing others,' and supporting and attacking policies, parties and governments. Yet, it is precisely this kind of political speech so essential to a free and democratic society that should be denied to our judges.
>
> Why should this be? The answer can be formulated in terms that will be all too familiar to Canadian judges: this limit on their free speech is reasonable and demonstrably justified in a free and democratic society. Let me proceed with the demonstration.
>
> The objective of the limit is the maintenance of an independent and impartial judiciary — an objective of supreme importance in a liberal democracy. Liberty depends on enjoying rights under law. Further, when disputes arise about these rights, liberty requires that the dispute be adjudicated by a third party who is neither bound nor partial to either of the parties to the dispute. It is the judiciary's function to provide such adjudication. To do so, the judiciary must be as independent and impartial as possible.
>
> Judicial independence and impartiality cannot be absolutes. Judges, individually and collectively, are independent in many ways on other parts of the state for, among other things, their appointments, material support of themselves and their institutions, and enforcement of their judgements. Nevertheless, a liberal democracy endeavours to maximize independence by establishing institutional arrangements and practices that protect the judiciary from any outside interference, direct or indirect, in performing their adjudicative function.

Honourable senators, in exchange for independence, judges must exercise a self-discipline, both on the court and off, that is not required of senators. All senators are admonished by the Senate rules to be courteous and refrain from personal, sharp, taxing language and to withdraw exceptional words with apologies. This advice could be better applied to judges who have differing opinions, especially when Supreme Court of Canada judges have differing opinions from those of judges in the lower courts and use excessive language or personal or intemperate language to overturn lower court decisions.

As the great Benjamin Barton Cardozo, an exemplar of judicial behaviour, a great American jurist who sat on the Supreme Court in the United States, put it, judges must cultivate, "a judicial temperament," all in aid of impartiality and public acceptance of the independent role of the courts.

Therefore, honourable senators, self-restraint and temperate language are hallmarks of a judicial temperament. To again quote Peter Russell:

> If judges were free off the bench to push for or against changes in public policy, or to support or oppose politicians, political parties or governments, then it is doubtful that they would maintain any credibility as third party adjudicators. Judges will have opponents on virtually any of the public issues on which they might take a public stand who will expect a fair hearing when they come to court. Legal questions may become the subject of adjudication. Outside this forbidden area there is plenty of scope for judges to write, speak and otherwise express themselves. In the field of legal scholarship they can, and often do, contribute to legal and judicial history and biography. Analyses of legal issues of contemporary relevance are much more questionable as they will likely be seen as committing the judge to a hard position on a particular subject before it is argued in court. Addresses or essays by judges re-explaining or "clarifying" decisions they have previously made on the bench should be avoided like the plague. Rather than clarifying the law, such efforts would more likely set up a confusing set of authorities parallel to the judicial decisions themselves.
>
> Then, of course, outside of law there are many realms of expressive activity in which judges are entirely free to engage. Art, history, literature, music, philosophy, religion, science and sports — in all of these fields, Canadian judges have in the past made distinguished — and undistinguished — contributions. Let us hope they will continue to do so in the future as unfettered in their freedom of expression as any other citizen!

Honourable senators, another great American jurist, Felix Frankfurter, also of the Supreme Court of the United States, himself a strange mixture of personal, if hidden activism, was yet a strict constructionalist when it came to the American Constitution. He entered these instructive words in his diary, dated January 11, 1943:

> When a priest enters a monastery, he must leave — or ought to leave — all sort of worldly desires behind him. And this Court has no excuse for being unless it is a monastery.

Honourable senators will forgive me the use of that quotation, written in 1943, because it lacks gender-sensitivity. If you substitute the words "nun" for "priest" and "nunnery" for "monastery," I think all senators will be more gently persuaded of Felix Frankfurter's idea.

Honourable senators, what can we do when one can fairly conclude, after a fair read of the current controversy between Mr. Justice McClung and Madam Justice L'Heureux-Dubé and their respective decision, that both justices fell below standards of appropriate judicial self-restraint — Justice McClung in his obviously injudicious letter, and Madam Justice L'Heureux-Dubé in her injudicious or intemperate language in her decision? I say with some caution, "injudicious" or at the very least intemperate, because, on a fair reading, it moved beyond self-restraint to avidly advocate possibly holding the judiciary in the lower court up to public contempt. If her judgment could very likely or possibly damage public confidence in that lower court, its partiality on other matters may come into question.

I turned to several guides for curbing injudicious conduct: the comprehensive and cogent report prepared for the Canadian Judicial Council by a classmate of mine, Professor Martin L. Friedland, entitled, "A Place Apart: Judicial Independence and Accountability in Canada"; a fine work, entitled, "The Judiciary in Canada," by Peter H. Russell; a little-known but interesting study by Mr. Justice Jules Deschenes, entitled, "Masters In Their Own House: A Study On the Independent Judicial Administration of the Courts"; and a recent very fine work by a Professor W.A. Bogart, entitled, "Courts and Country." All of the principles articulated by Peter Russell that I have quoted are amplified in abundance in these informed works. Judges must be independent by the absolute appearance of impartiality. They must stand outside the daily political fray. They must be careful and judicious in their conduct off the bench, and temperate and careful in their written judgements.

My former teacher and jurist, the late Chief Justice of Canada, Bora Laskin, was adamant on this point: Judges should only speak through their decisions; they should not amplify or detract from their decisions. This has not been a course of conduct that has been followed of late by senior judges, not only those on the Supreme Court of Canada but elsewhere. Obviously, this has been a matter of some great debate.

Let me quote from footnote 14 at page 362 of Professor Friedland's book, *A Place Apart: Judicial Independence and Accountability in Canada*. It deals with the issue of judicial free speech. You will forgive me if I quote this footnote in full because I am sure judges will want to re-examine it. This is on the question of the utilization of free speech. It reads:

> Supreme Court Justices McLachlin, Sopinka and Wilson are recent examples.

This is the question of utilization of free speech. Professor Friedland went on to state:

> See A. Wayne MacKay, "Judicial Free Speech and Accountability: Should Judges Be Seen but Not Heard?" (1993) 3N.J.C.L. 159 at p. 180. See also Sean Fine, "More Judges Dare to Break Silence Away From Bench," *Globe and Mail* (13 November, 1993). Compare the statements of Chief Justice Bora Laskin and Justice Sopinka, as quoted in MacKay at p. 173:
>
> In a speech by Justice Sopinka, "Must a Judge be a Monk?"

This was addressed to the Canadian Bar Association on March 3, 1989. At page 8, Justice Sopinka said:

> While I support the rationale for some restrictions on speech, the public must also realize that judges do have views on issues and must have the confidence that the judiciary is capable of seting aside personal political views when such views threaten to interfere with their impartiality in deciding particular cases.

This was his assumption for speaking out. The footnote continues:

> In contrast, Chief Justice Bora Laskin, in "Berger and Free Speech of the Judge" an address to the Canadian Bar Association Annual Meeting in Toronto, in September, 1982, at page 10 stated: "Surely there must be one stance, and that is absolute abstention, except possibly where the role of a court is in itself brought into question. Otherwise, a judge who feels so strongly on political issues that he must speak out is best advised to resign from the bench. He cannot be allowed to speak from the shelter of a judgeship."

In chapter 9 of *The Court in Country*, entitled "The Charter: Invigoration of Rights, the Enfeebling of Democracy?", he quotes again from the late Justice John Sopinka:

> Currently in Canada we do have judges who regularly accept speaking engagements. I believe this practice ought to be encouraged as it provides an excellent forum for the public to learn more about their judges, and the courts which govern their lives. As custodians of the Charter of Rights, judges are now performing a supreme public service."

The author goes on to say this about that quote:

> How do we test the claim of 'supreme public service' in terms of ordinary Canadians in their everyday lives as others attempt to provide them with health care, educate their children, keep their streets and parks safe and clean, strive to establish safe and equitable work, all under the aegis of divisions of government other than the courts?

He goes on to say:

> In bluntest terms, two very different models of democracy are at stake.

I will not continue to quote from that, but I suggest all senators read that chapter because it is very illuminating. There is, honourable senators, a major division within the judiciary and within the country about the role of judicial advocacy.

By the way, Professor Friedland, the late Mr. Justice Sopinka and I were all classmates at the University of Toronto at the same time. We were all students of the late Bora Laskin, which only goes to show you that friends can differ.

On reviewing the role of the Canadian Judicial Council, I was reminded of its clear-cut origins. My good friend, Professor Friedland, reminded me that I was involved somewhat indirectly in the political discussion that led to the establishment of that council. Honourable senators will recall that the former prime minister, the Right Honourable John Turner, then minister of justice and attorney general — and, if I may add as an aside, probably the one of the greatest ministers of justice we have had since Confederation —

The Hon. the Speaker: Honourable Senator Grafstein, I regret to interrupt you, but the 15-minute speaking period has expired.

Senator Grafstein: May I have leave to continue, Your Honour?

The Hon. the Speaker: Is leave granted?

Hon. Marcel Prud'homme: Honourable senators, earlier today, I was asked, and I cooperated and gave my consent, to cut three speeches. I have no objection to the honourable senator continuing because people may think it is personal, but I would like to know to what I am saying yes to. Is it a long yes? We are civilized and we can permit the senator to finish, but earlier many of us cut our own speeches.

Senator Grafstein: I need several minutes.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Please continue.

Senator Grafstein: I thank you, Senator Prud'homme and others.

John Turner was then minister of justice and he was seized of this particular problem arising out of the Landreveille affair. I will not belabour that issue, but there was controversy about removing Judge Landreville. I was a volunteer advisor to the minister at that time. Mr. Turner concluded the methodology of impeaching judges was not spelled out in the Constitution and decided that an inquiry should be held by a single judge. This, he concluded after the inquiry, was a very unsatisfactory methodology. Hence, the establishment of the Canadian Judicial Council, made up of judges' peers, to make a preliminary determination of whether or not a judge should be impeached for conduct unbecoming a judge — that is, for bad behaviour under the Constitution.

The question that Senator Cools raises is: What is the appropriate method of criticizing the behaviour of judges who allegedly fall short of behaviour within the meaning of section 99 of the Constitution Act, 1867, warranting removal from office? In 1994, the Canadian Judges Conference stated:

> The conference considers it appropriate that the Judicial Council's present practice of expressing its disapproval of conduct falling short of good behaviour is within the meaning of section 91, 99, and the Constitution Act of 1867 as amended.

In effect, the judges are suggesting that criticism and even censure by its Judicial Council is the appropriate methodology of constraining judges in terms of conduct both on and off the bench. In turning to the debate of Parliamentarians when the bill was established, it was clear that Mr. Turner intended the Judicial Council would have a wider mandate than merely acting as part of a process leading to the impeachment or removal of a judge.

Senator Cools says — and rightly so — that she questions the independence of the Canadian Judicial Council since the council is comprised only of members of the Supreme Court and other senior judges. The Supreme Court might be the subject-matter of a complaint, as in this case the current controversy between Justices McClung and L''Heureux-Dubé. In examining provincial judicial councils, it appears the Canadian Judicial Council is the only council that is comprised of judges alone. There are no outside auditors or members independent of the judiciary on the Canadian Judicial Council, unlike all of its provincial counterparts.

Thus, for the sake of impartiality, one can conclude that a complaint lodged would, of necessity, as I pointed out to Senator Cools, require judges of the court being criticized to excuse themselves from any inquiry of such complaint. However, this still would not wholly satisfy any objective test of impartiality.

I conclude, honourable senators, that perhaps one of the reforms that the government might consider to deal with Senator Cools' very excellent exegesis might be an amendment to remake the Canadian Judicial Council to deal with conflicts in a transparent way and appoint non-judges as well as judges from other jurisdictions to such inquiries.

Honourable senators, we have been blessed in this country with an outstanding judiciary, appointed like senators, who maintain the appearance and the essence of impartiality. The vast majority work diligently within their prescribed constitutionally granted duties. The vast majority exercise self-restraint, both on and off the bench, and enjoy a judicial temperament. Still, it might be incumbent upon the Attorney General, the Minister of Justice and this government to consider amendments to the Canadian Judicial Council. It would elevate the public's trust in the judiciary's impartiality and independence and more carefully delineate the parameters of appropriate criticism of judicial conduct in its decisions on the bench and its conduct off the bench.

Honourable senators, I gave some thought to the Senate establishing a judiciary committee that would exercise parliamentary oversight on these matters. Maybe this is an idea whose time has come.

Hon. John. B. Stewart: Honourable senators, I thank Senator Grafstein for a very thoughtful address on an extremely important topic. I have a question for him.

•(1740)

I realize that in the United Kingdom statute law is supreme. That, of course, makes the circumstance there different from the circumstance in Canada, where there has been judicial review from 1867 on federal questions and, latterly, on Charter questions.

Has my honourable friend had an opportunity yet to look into the British experience with judges who fail to recognize the limits of their competence?

Senator Grafstein: The Honourable Senator Stewart raises an important point. I have not done a thorough study of this question in terms of judges' conduct. All I can give is anecdotal information that I have derived from reading statements, books and articles written by various judges.

When one examines that, one will see that the judiciary in England has another issue that has come to life; that is, that senior judges there sit in the House of Lords. They are admonished to have, in effect, Chinese walls between their conduct affecting the matters that might come before them. However, they have a very mixed system.

Having said that, there is still a written and unwritten philosophic position that judges should exercise self-restraint when it comes to political issues that would or could possibly relate to their judicial functions.

As I say, the English case is somewhat spotty. However, there is no question in my mind that we carefully navigate between a judiciary that is independent and impartial yet at the same time under the umbrella of Parliament. Our system is unique.

The American principle of judicial temperament and self-restraint, which was picked up from the common-law experience, was well established in Canada up until 1982. After 1982, judges have taken upon themselves political roles that go beyond the narrow confines of the Constitution.

That is why, after some deliberation, I concluded that, perhaps, the best way to deal with this, if the judicial council were not ample enough, is to have parliamentary oversight of this matter.

Honourable senators, when I raised this question with a number of academics, as I have, they all said to me, "The idea is excellent, except for one thing: The problem with raising it under our system of a judicial committee is that we might be inviting judge-bashing. We might use intemperate and political language ourselves to bring the judiciary into disrepute." That is why they felt more comfortable with having a Senate committee deal with this issue as opposed to a committee of both places.

I hope Senator Cools will take what I am about to say as a fair comment. If we are to criticize judges, which I think we are able to do, then we must exercise self-restraint. I keep saying to myself that if we are to move into this very dangerous territory of somehow criticizing judges for their impartiality, then we have to do so with great delicacy and self-restraint. I am comfortable in this place that, over the course of time, we have been able to do that.

I hope Senator Cools, who I complimented at the beginning of my speech, would exercise the same self-restraint in criticizing judges that she expects from judges who are on the bench.

On motion of Senator Kinsella, for Senator Nolin, debate adjourned.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO PERMIT ELECTRONIC COVERAGE OF DELIBERATIONS

Leave having been given to revert to Notices of Motions:

Hon. Lise Bacon: Honourable senators, I move, seconded by the Honourable Senator Maheu:

With leave of the Senate and notwithstanding rule 58(1)(*a*), that the Standing Committee on Transport and Communications be authorized for its study of Bill C-55, respecting advertising services supplied by foreign periodical publishers, to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

The Hon. the Speaker: Is leave granted, honorable senators?

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

ROLE OF CANADIAN JUDICIAL COUNCIL

MEDIA COMMENTS—INQUIRY—DEBATE CONTINUED

Hon. Anne C. Cools rose pursuant to notice of Thursday, March 18, 1999:

That she will call the attention of the Senate:

(*a*) to the letter to the editor in the *National Post*, March 13, 1999, entitled "Fair Hearing," written by British Columbia Chief Justice Allan McEachern, the Chairperson of the Canadian Judicial Council's Judicial Conduct Committee, responding to the March 10, 1999 *National Post's* editorial "Hardly Impartial" about Mr. Justice John Wesley McClung, Madame Justice Claire L'Heureux-Dubé, and the Canadian Judicial Council;

(*b*) to the continuing public controversy about Alberta Court of Appeal Justice John Wesley McClung, and Supreme Court of Canada Justice Claire L'Heureux-Dubé, and the media reports of same;

(*c*) to the interview and the comments of Chief Justice Allan McEachern as reported in the *Lawyers Weekly* February 26, 1999 article "Judges Must be Cyber-Warriors";

(*d*) to the matter of justices' public statements in the media; and

(*e*) to the concept and principles of judicial independence and to Parliament's rights in these matters.

She said: Honourable senators, I rise to speak about British Columbia's Chief Justice Allan McEachern's letter to the editor of the *National Post*, March 13, 1999, entitled, "Fair Hearing" about the Alberta Court of Appeal Justice John Wesley McClung and Supreme Court of Canada Justice Claire L'Heureux-Dubé matter, and the Canadian Judicial Council.

Chief Justice McEachern is the chairperson of the Canadian Judicial Council's Judicial Conduct Committee and an important and capable judge. Chief Justice McEachern's letter states:

> More important, though, Chief Justice Lamer does not participate in the consideration of complaints against judges of his or any other court. Indeed, the council's bylaws prevent it in all cases except where he believes his participation is required in the public interest. Even in such matters, he would, after considering the public interest, probably disqualify himself if his participation would create a reasonable apprehension of bias.

Honourable senators, Chief Justice McEachern is a fine judge, and a fine man. However, the fact is that Canadians expect their justices to be judges and not politicians.

Our principles and Canadian parliamentary responsible government democracy have maintained that justices' participation in public and political controversy is undesirable and forbidden. Public posturing by justices is objectionable. That many good justices are now compromised and in a terrible position is the making of some judges. This is a new and current problem, a post-Charter of Rights and Freedoms problem.

The current problem of judicial activism is best understood by pondering former prime minister Pierre Elliott Trudeau's mature, retrospective reflections on the Supreme Court decision in the 1981 *Patriation Reference*.

In 1991, at the opening of the Bora Laskin Law Library at the University of Toronto, an insightful Pierre Trudeau spoke about this decision and its constitutional, legal and political problems, and the role of the Government of Quebec. He told us that had the Supreme Court not played politics and had given a legal decision to which Canadians were entitled, and not a political one, that:

> ...Canada's future would have been more assured.

About the role of the Supreme Court in this decision, Mr. Trudeau said:

> ...it is not a role to which a court of law striving to remain above the day-to-day currents of political life should aspire.

Mr. Trudeau gave us a solemn and ponderous criticism of the court, saying:

> ...they blatantly manipulated the evidence before them so as to arrive at the desired result. They then wrote a judgment which tried to lend a fig-leaf of legality to their preconceived conclusion.

Amazing words for a former prime minister, "...a fig-leaf of legality to their preconceived conclusion."

Honourable senators, Chief Justice McEachern's letter offers his reassurance to the public of the justness, process and proper form of the Canadian Judicial Council, but his letter itself is not in proper form.

•(1750)

Understandably, he seeks the public's confidence in his integrity and in the integrity of those members of the Judicial Council who examine complaints. He asks for public confidence in Chief Justice Antonio Lamer. However, the problem eludes him. The problem is that that very confidence and trust which he seeks, a trust on which the system is founded, has been undermined, and has been undermined by some justices themselves in their unrelenting and persistent forays into public policy and into politics.

Further, his own public letter compounds it and consequently prompts my response. Chief Justice McEachern proves that something is very wrong in the judicial condition of Canada, and that something is needing correction. Chief Justice McEachern's letter exacerbates the current confusion about the difference between principles and interest, and between the legal, the judicial, and the political.

Honourable senators, I turn now to the judicial condition in Canada. Judicial activism has been aggressive and dominant for the past decade. Justices have galloped into every aspect of public policy, displacing and replacing parliamentarians as decision makers of public policy and as determiners of the public interest. Judges have become judicial lawmakers, even dispensers of the public treasury, and have charged millions of dollars to taxpayers in disregard of the principle of accountability of the public treasury to Parliament for public expenditures, and in disregard of the principle of the consent of the governed. Some judges have made themselves judicial legislators, supreme parliamentarians — all without accountability.

The cause of this controversy which burst into national consciousness is the fact that many justices have exceeded their proper constitutional limits, their proper judicial limits, and have used the Charter of Rights and Freedoms and other ideologies to take over political and parliamentary ground. Having aggressively moved onto political ground, they cannot now plead mercy or exemption from the consequential political, public and journalistic fallout on the grounds of being high court justices. Neither can they plead confidence in this judges' or that justices' personal integrity. The problem is in the judicial condition of Canada. Judicial activism has been vigorous in family law and in criminal law, and has reshaped Canada in the vision of the reshaping justices. It is this judicial condition that has given rise to the current situation of Justice McClung and Justice L'Heureux-Dubé.

Honourable senators, here, on March 4, 1999, I said that Mr. Justice McClung has had many judgments assailed by the Supreme Court. In one of these, the 1996 *Vriend v. Alberta*, Justice McClung said at page 619:

> As I have said, none of our precious and historic legislative safeguards are in play when judges choose to privateer in parliamentary sea lanes. ... Judicial restraint in the use of legislative power is not a fresh topic.

Justice McClung speaks of the piracy of judges in Parliament's business and its consequent erosion of the body politic to the institutions and to justice itself. As a senator and a member of Parliament, I have a special role in the superintendence of the behaviour of justices. It is my bounden duty to uphold the independence of justices and to protect justices from personal or political attack. I believe that justices must uphold the same principles.

I note that when Justice McClung's decision in *Vriend* was before the Supreme Court, it was assailed. I note that the Alberta government's lawyer, John McCarthy, was treated quite harshly. On November 4, 1997, in one statement by Justice Frank Iacobucci to Mr. McCarthy during his submissions, Justice Iacobucci said, as recorded at page 115 of the transcript:

> We are taking from all of this that there is a new doctrine called the McCarthy Doctrine, that statutory non-feasance is not covered by the Charter.

The "McCarthy Doctrine," named after the Alberta government's lawyer, counsel for Alberta's Attorney-General, counsel for the people of Alberta.

Honourable senators, on judicial activism, I note in today's *Ottawa Citizen* an article about a speech by Justice Iacobucci entitled "Supreme Court judge defends judicial activism." I shall speak to this matter in the future.

Honourable senators, the Supreme Court led in this judicial activism, claiming the Charter as its command, and using it as both shield and sword. Chief Justice Lamer's public media pronouncement declares that Parliament commanded this. Some clarification is needed. The Charter made no such command. Further, Parliament did not order, intend, or even anticipate that the courts and the justices would engage as they have. In fact, the forays of justices into the legislative function, complete with judgments and inevitable negative consequences, can only be described as a judicial coup d'etat. This is a judicial usurpation of legislative power and function. It is a diminution of Canadian citizens' representative rights in public policy. It is constitutional vandalism.

This consequential imbalance in the body politic, a pathology, lies at the heart of this controversy around feminist activist Justice L'Heureux-Dube's concurring judgment in *R. v. Ewanchuk* and its pointed attention on traditionalist Justice McClung. Many justices have succeeded in their judicial activism in the courts, sometimes with the support of certain politicians and attorneys general who have allowed the courts to become instruments of public policy while confident of their parliamentary party caucus disinclination to hold them responsible to Parliament.

In a speech to the Canadian Bar Association, excerpted in *The Ottawa Citizen* of August 27, 1998 in an article entitled "Curb the Judicial Godzillas," former Minister of Justice and Attorney General John Crosbie described this judicial piracy, saying:

> ... the judges in Canada are the godzillas of government with the legislative and executive branches becoming the Mickey Mouse of government.

With success on the bench behind them, many justices have carried this judicial activism beyond the bench and into public domain in the daily media, posturing and pronouncing. I note that Chief Justice McEachern attempts to uphold Chief Justice Lamer's role in the functioning of the Judicial Council. Chief Justice McEachern's magnanimity and fair-mindedness is worthy, but the public mind knows what it has been hearing and seeing, and the public mind is judging.

The public frequently sees and hears Chief Justice Lamer pronouncing publicly on public policy, even public bills. For example, in an August 29, 1997 *Lawyers Weekly* article, Chief Justice Lamer opined about a unanimous Senate vote on Bill C-42, 1996, as follows:

> I don't think that criticism was valid, and I don't think that most members of the Senate agreed with that criticism ...

Now Chief Justice McEachern adds his own words about Chief Justice Lamer's interest to this current controversy. He raises Chief Justice Lamer's flag, as the trustee of the public interest. That is the problem; the public interest is a political concern, not a judicial one or a legal one. Chief Justice McEachern asks for trust, but his letter fuels the mistrust.

Honourable senators, Chief Justice McEachern, by his letter, achieves the opposite of his very good intention. The problem is this public political activity of Canadian justices, and that Canadians disapprove of it. Because of aggressive, often ideological activism, the proper relationship between Parliament and the judiciary has been disturbed and is now impaired and

damaged. Within the judiciary itself, the proper relations between the justices themselves and their courts have been disturbed, as proved by this controversy. Inevitably, as a consequence of these impairments, the proper relationship between justices and litigants, justices and accuseds, has been disturbed. That is at the heart of the controversy. Is there justice for the citizen — an accused, a plaintiff, a defendant — in our courts and before certain judges? These questions haunt. Did the accused in *R. v. Ewanchuk* get justice in that case? Did activism, ideology, and ideological feminism have a role? If so, what role, and who answers these questions?

Honourable senators, Chief Justice McEachern's letter proves the public's awareness of its own entitlement to a proper functioning judiciary, impartial from ideological and other political crusades. The Judicial Council was created by the Judges Act, Part II, sections 58 to 65. These sections never contemplated current Charter activism, nor current ideological curial warfare on the bench or in the public. Those sections did not anticipate court judgments as ideological instruments or curial battles within judgments and within courts. The Judicial Council is an agent of the sovereign, the executive, not an agent of the people. It is the creature of two members of the executive, the Minister of Justice and the Chief Justice of the Supreme Court. Chief Justice McEachern's letter proves this.

•(1800)

The Chief Justice of Canada is a member of the Privy Council of Canada, and formerly was a member of the United Kingdom's Privy Council and is currently the Deputy Governor General of Canada, giving assent to bills in the Senate. The Judicial Council is and embodies the executive's and the cabinet's interest in the administration of justice. The Judicial Council does not embody the public interest or the public's representative interest, only the executive's interest in justices' behaviours. Parliament alone represents the public's and citizens' representative interest.

This was the political and constitutional raison d'être behind the *Act of Settlement, 1701* and Canada's *Constitution Act, 1867*, section 99, which assigned that public interest that representative interest to Parliament, as against the executive's interest in the behaviour of judges. Section 99(1) reads:

> ...the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

The Hon. the Speaker: Honourable Senator Cools, I regret to have to interrupt you, but it is six o'clock. Unless there is agreement not to see the clock, I will be forced to leave the Chair.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I believe there is agreement not to see the clock.

The Hon. the Speaker: Please continue, Senator Cools.

Senator Cools: Honourable senators, the Judicial Council is not competent to adjudicate this conflict of judgements and ideologies between Justice McClung and Justice L'Heureux-Dubé or any other related complaints because the Judicial Council has no public representative role in the matter. Those provisions about justices judging justices are not consistent with judge's current Charter roles, political roles that some have assumed improperly. The Judicial Council as constituted and headed by Chief Justice Lamer does not represent the public interest in justices' relations to each other — only Parliament does.

Honourable Senators, as Mr. Trudeau said, Canadians have a right to expect judgements from judges based in law, not judges' subjective values, preferences or beliefs about the public interest.

In closing, I shall illustrate my point about the political nature of this controversy. I had said that judicial activism is rampant in family law and criminal law. About family law and the non-custodial parents, usually fathers, Justice L'Heureux-Dubé in her reasons for judgement in the 1993 Supreme Court case *Young v. Young*, wrote:

> Thus, the role of the access parent is "that of a very interested observer, giving love and support to [the child] in the background." (*Pierce v. Pierce*), [1977] 5 W.W.R. 572 (B.C.S.C. in chambers), at p.575.

Honourable senators, no law ever enacted by this Parliament, or any common law, or any rule of law ever authorized the relegation of good fathers, post divorce, to the status of "observers" in their children's lives. Some justices have been interposing their own wishes on the country and have been ruling the country from the bench. A clear articulation in this vein was made by Justice John Wesley McClung, who has declined to join the activists, when, in his 1996 Alberta Court of Appeal judgement in *Vriend v. Alberta*, he wrote:

> This is because of the spectre of constitutionally hyperactive judges in the future pronouncing all of our emerging rights laws and according to their own values; judicial appetites, too, grow with the eating.

Honourable senators, judges should not be cyber-warriors, nor warriors of any kind. Warring of all kinds is politics, usually bad politics.

On motion of Senator Carstairs, for Senator Sparrow, debated adjourned.

NEWFOUNDLAND AND LABRADOR

FIFTIETH ANNIVERSARY OF CONFEDERATION—INQUIRY

Hon. Ethel Cochrane: Honourable senators, on March 31, which is an exciting day far all of us, we will celebrate the fiftieth anniversary of Newfoundland's entry into Confederation with Canada — a date different from what was originally planned. As S.J.R. Noel stated in his book on the political history of the province, *Politics and Newfoundland*:

> The agreement was scheduled to come into effect on 31 March 1949. It had originally been scheduled for 1 April, the beginning of the Canadian fiscal year, but was changed to avoid holding the anniversary of Confederation on April Fool's Day.

There is a very human element to the celebration of this anniversary, which sets it apart from the celebration of Confederation elsewhere in Canada. Most of the provinces joined together in the 19th century, or at the latest, in the cases of Alberta and Saskatchewan, in 1905. However, because Newfoundland and Labrador joined so recently, many of the citizens of our province who will be marking this occasion were born before Confederation.

CBC radio host Marjorie Doyle reminded us of this in a recent article in *The Globe and Mail*. She wrote:

> Every Newfoundlander over 50...was born a Newfoundlander. Those who are 65 were teenagers at the time of Confederation. Those who are 70 and older voted...Pause a moment to think of the Newfoundland people that night...those who'd voted yes and those who'd vote no, those on both sides who were full of lingering uncertainties. Think of them going to bed that night Newfoundlanders and waking up the next morning in a new country.

It was a momentous decision to give up on independent dominion status and join with Canada in 1949, and it was a decision that took well over eight decades to make. Newfoundland flirted with Confederation in the 1860s and sent representatives to the Quebec conference, but ultimately decided not to join. Mr. Rand Dyck summarized the situation in his book *Provincial Politics in Canada*. This is what he wrote:

> Newfoundland's geographic separation, the irrelevance of issues such as railways, Fénian raiders and possible American invasion, its strong national pride and its tendency to look eastward to Britain rather than westward to Quebec, were all factors which discouraged any move toward joining in Confederation....The election of an anti-Confederation Government in Newfoundland in 1869 effectively put an end to that issue for many years.

Honourable senators, times do change. Newfoundland proposed to join Confederation in 1894, but at that time, it was rejected by Canada.

Forty years later, in 1934, Newfoundland was virtually bankrupt — as were some Canadian provinces like Alberta and Saskatchewan — and Britain suspended dominion status and imposed government by commission directed from London.

The years of commission government from 1934 to 1949 were viewed as a benevolent dictatorship. The commission consisted of three Newfoundland commissioners and three sent from Britain, plus the governor, who was appointed by Britain.

In 1934, Sir Murray Anderson, who had been governor in the dominion government, remained in place as the first governor of the commission government. The British provided competent administration and considerable financial assistance for the colony, but there was very little contact between the commission and the people, little in the way of innovative policy, and continuing poverty.

•(1810)

The number of people living on relief continued to increase until 1939. There was growing public opposition to its commission. There is evidence that not all of the commissioners were entirely happy with their role, either. Noel quotes one of the early British commissioners, T.L. Lodge, who published a book in 1939, entitled "Dictatorship in Newfoundland." Lodge wrote the following about this commission that was sent over from Britain:

> I had no particular desire to go to Newfoundland. The Treasury brought to bear upon me as much pressure as they normally do in regard to appointments of less than first-class importance, and in the end I agreed.

The situation in Newfoundland changed significantly with the outbreak of World War II. A British-American agreement resulted in the establishment of three American military bases on the island, which brought both construction and consumer spending. Several new Canadian bases were also built. In addition, the price of fish increased and suddenly Newfoundland was, if not prosperous, at least solvent. By 1942, there was a budget surplus. Think of that. The government began to improve services.

In 1946, with the economy in better shape as a result of the war effort, especially and ironically because of the spending boom generated by the American military bases, a national convention was formed to make recommendations on Newfoundland's future form of government. There is continuing debate about whether the convention was a serious exercise in national decision making by the citizens of Newfoundland and Labrador, or just a charade to mask a predetermined decision by Britain and Canada.

Some historians argue that Joey Smallwood had been chosen before the end of the war to lead a pro-Confederation movement and given financial backing by the Liberal Party of Canada. Certainly, at the end of the war, Britain was itself in difficult financial circumstances and eager to be rid of responsibility for our colony. Canada had learned during two world wars about the strategic significance of Newfoundland.

In any event, the convention did meet and its 45 delegates proposed a referendum to choose between commission government or a return to responsible government and dominion status. By a vote of 29 to 16, the delegates decided not to include the option of confederation with Canada. Smallwood railed against the "29 dictators" and organized a mass petition to protest their decision. Britain took advantage of the petition to include the Confederation option on the ballot.

Honourable senators, you know the result. It took two ballots in two very divisive referendum campaigns, but in the end the voters of Newfoundland chose Confederation by a slim 52.3 per cent majority. In fact, a return to responsible government had been the most popular option in the first ballot, getting 44.5 per cent of the vote to 41.1 per cent for Confederation. When continued commission government was dropped off the second ballot, Confederation won the day.

The story has also been told, in fact, by Jack Pickersgill himself, that prime minister Mackenzie King was, at first, reluctant to accept such a slim declaration of faith in Canada. However, Pickersgill, who was secretary to the prime minister at the time, pointed out to King that the margin of victory for Confederation was larger than King's margin of victory in his election campaign. Therefore, Confederation came to be.

To understand why that result was so close, you must understand that much of the opposition to Confederation was based not on dislike or antipathy to Canada, but on apathy. I am indebted here to a delightful article in the August-September 1996 issue of *The Beaver*, by C.J. Fox, entitled "A Glorified Stall: Newfoundlanders rant and roar over Confederation, 1946-48."

Mr. Fox is the son of Newfoundland Supreme Court Justice Cyril James Fox, who initially chaired the national convention in 1946, but unfortunately died halfway through the proceedings. This is what his son writes:

> To many Newfoundlanders in the early 1940s, Canada seemed a distant and vapid entity despite the fact that its servicemen assumed an unruly presence in the colony after Ottawa had been finally persuaded of the island's strategic value and military vulnerability. Newfoundland's face was still turned to Britain, her back to the Gulf, and on our few highways we proudly drove to the left.
>
> There was, however, another and increasingly conspicuous force at work in our midst serving to obscure the Canadian factor. This was the U.S.A. whose crisply uniformed sons — the Canadians were drably attired and drove ugly snub-nosed trucks — poured in. (Governor) Walwyn complained that, if anything, the Newfoundlanders are so dazzled by American dollars, hygiene and efficiency that many of the public rather play up to America in preference to Canada.

Fox goes on to quote from the book by David McFarlane, "The Danger Tree," on this period in Newfoundland history. He says:

> Canada, to the anti-confederates, was a vast and incomprehensible place, an ocean of concern away. It was a pale, half-baked country — too large to make any sense and, for its size, too underpopulated to be of any importance. It was made up of people who lacked the spirit to be American and the good sense to be true subjects of the British Crown....English Canada boasted an awkward and doomed alliance with the French in Quebec, and its' Ontario-based politicians spoke with flatulent rhetoric in accents flat as hayfields.

In the face of this decidedly apathetic view of the Canadians to the south and west, the movement to join with Canada desperately needed a champion, and they found one. There is surely no doubt that the most important factor in the outcome was the campaign led by Joey Smallwood.

Part of his success was his experience as a popular radio broadcaster, and he was aided tremendously by the commission's decision to broadcast proceedings of the convention.

His speaking ability gave Joey Smallwood a tremendous personal appeal that his anti-Confederation opponents could not match. Especially in the outports, he was treated as a new Messiah. I remember vividly, as a young girl of 12, during that time seeing pictures of Smallwood plastered all over the houses in our community.

However, honourable senators, there was more to Smallwood and the victory for Confederation than just his oratorical ability, and it is on this note I should like to conclude. What was it that Joey Smallwood offered to the people of Newfoundland? What did he use his rhetorical ability for? When he spoke of the advantages of Confederation, he promised family allowances. He promised old age pensions for the retired. He promised significant spending in Newfoundland on federal public works projects. Most important, he promised patronage. I quote Rand Dyck again.

> His efforts were financed in part by the Liberal Party of Canada, on whose fundraisers he had previously called for assistance, and he was not above promising senatorships and other post-Confederation positions in return for local contributions.

Now, I would not have you think that this is simply the judgment of a cynical academic. During the convention debates, Smallwood was confronted by his arch-enemy, Peter Cashin, the leader of the anti-confederate forces. Cashin accused Smallwood of offering Canadian senatorships as bait to potential confederates and demanded an explanation. Mr. Smallwood gave this reply:

•(1820)

> I like Mr. Cashin. I enjoy him. He fascinates me...I have no more senatorships to offer. I'm sorry, but I promise him faithfully, that if I should ever become Prime Minister of Canada...I'll see that he is fixed up. I'll see that he gets a position fully in keeping with his parliamentary background. I'll make him Gentleman Usher of the Black Rod. I'd give anything to see him all togged off in those dinky black pantaloons and three-cornered hat.

The Hon. the Speaker: If no other honourable senator wishes to speak, this inquiry shall be considered debated.

TRANSPORTATION SAFETY

SPECIAL COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition), for Senator Forrestall**,** pursuant to notice of March 17, 1999, moved:

> That, notwithstanding the Order of the Senate adopted on Thursday, June 18, 1998, the date for the final report of the Special Senate Committee on Transportation Safety and Security, be extended to November 30, 1999.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, this motion in the name of Senator Forrestall has been on the Order Paper for some time. I believe Senator Forrestall was aware of the fact that I had a number of questions that I wished to ask of him.

If we do not pass at least part of this motion today, however, he and his committee will be in violation of the order of the Senate because he has only an extension at the present time until March 31, 1999. We will not be sitting on that date.

MOTION IN AMENDMENT ADOPTED

Hon. Sharon Carstairs (Deputy Leader of the Government): Therefore, it is my recommendation, and I so move in amendment, seconded by the Honourable Senator Callbeck:

> That the motion be not now adopted but that it be amended by replacing the words "November 30" by the words "April 15."

Thus, I can then have an opportunity to question Senator Forrestall.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Hon. Senators: Agreed.

The Hon. the Speaker: We are back to the main motion, as amended.

Is it your pleasure, honourable senators, to adopt the motion as amended?

Hon. Senators: Agreed.

Motion agreed to, as amended.

[*Translation*]

ADJOURNMENT

Leave having been granted to return to notices of motion of the government:

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*h*), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, April 13, 1999, at 2 p.m.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, April 13, 1999, at 2 p.m.

APPENDIX

(see p. 2972.)

Document Tabled by Senator Pat Carney

During Consideration in

Committee of the Whole

on Bill C-76, to provide for the resumption of

and continuation of government services

On March 25, 1999, Honourable Pat Carney, P.C. received 37 phone calls from federal correctional institution officers in British Columbia, requesting that Bill C-76, which provides for the Treasury Board to write collective agreements, be amended to include the majority decision of the Conciliation Report.

Their names are as follows:

Joanna Schultz
Bernice Draft
Lisa Munro (Fernie, BC)
Jean Despecier (Aggasis, BC)
Gilles Brouillette
Mike Riddell
Ivan Garbellia — Kent Institution
Morgan Andreassen (New Westminster, BC)
Carol Goldie — Matsqui Institution
Shawn Dinger — (Chilliwack, BC)
Ernie Dombrowski — Matsqui Institution
Roseline Hussey — Matsqui Institution
Brenda Scott — Matsqui Institution
Randy Rast — Matsqui Institution
Allan Serdar — Matsqui Institution
Ovid Mac — Matsqui Institution
Cheryl Sharp (Abbotsford, BC)
Robert Lambert — Matsqui Institution
Andrew Vukusic — Matsqui Institution
Blair Davis — Matsqui Institution
Randy Dingra — Matsqui Institution
Dan Fyse — Matsqui Institution
Mike Hickman — Kent Institution
Andrew Marshall — Matsqui Institution
Rick Lindman — Matsqui Institution
George Pool — Matsqui Institution
Brian Krueger — Matsqui Institution
Norm Thibault — Matsqui Institution
Wally Van Vugt — Matsqui Institution
David Zeswick — Kent Institution
Bab Sanger — Kent Institution
Paul Greenhall — Kent Institution
Robert Waslinski
Walter Grehenko
Mol Army (Elbow Lake, BC)
David Laughlin (Chilliwack, BC)
Mark Bussey — Kent Institution

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(1st Session, 36th Parliament)
Thursday, March 25, 1999

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to amend the Canadian Transportation Accident Investigation and Safety Board Act and to make a consequential amendment to another Act (Sen. Graham)	97/09/30	97/10/21	Transport and Communications	98/04/02	four	98/05/27	98/06/18	20/98
S-3	An Act to amend the Pension Benefits Standards Act, 1985 and the Office of the Superintendent of Financial Institutions Act (Sen. Graham)	97/09/30	97/10/21	Banking, Trade and Commerce	97/11/05	seven	97/11/20	98/06/11	12/98
S-4	An Act to amend the Canada Shipping Act (maritime liability) (Sen. Graham)	97/10/08	97/10/22	Transport and Communications	97/12/12	three	97/12/16	98/05/12	06/98
S-5	An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts (Sen. Graham)	97/10/09	97/10/29	Legal and Constitutional Affairs	97/12/04	one	97/12/11 Senate agreed to Commons amendments 98/05/06	98/05/12	09/98
S-9	An Act respecting depository bills and depository notes and to amend the Financial Administration Act (Sen. Graham)	97/12/03	97/12/12	Banking, Trade and Commerce	98/02/24	one	98/03/19	98/06/11	13/98
S-16	An Act to implement an agreement between Canada and the Socialist Republic of Vietnam, an agreement between Canada and the Republic of Croatia and a convention between Canada and the Republic of Chile, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	98/05/05	98/05/12	Foreign Affairs	98/05/28	none	98/06/02	98/12/03	33/98
S-21	An Act respecting the corruption of foreign public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to make related amendments to other Acts	98/12/01	98/12/03	Whole	98/12/03	one at 3rd	98/12/03	98/12/10	34/98
S-22	An Act authorizing the United States to preclear travellers and goods in Canada for entry into the United States for the purposes of customs, immigration, public health, food inspection and plant and animal health	98/12/01	99/02/11	Foreign Affairs	99/03/24	four			

S-23	An Act to amend the Carriage by Air Act to give effect to a Protocol to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air and to give effect to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier	98/12/10	99/02/03	Transport and Communications	99/03/11	none	99/03/16	

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act to establish the Canada Pension Plan Investment Board and to amend the Canada Pension Plan and the Old Age Security Act and to make consequential amendments to other Acts	97/12/04	97/12/16	Committee of the whole 97/12/17	97/12/17	none	97/12/18	97/12/18	40/97
C-3	An Act respecting DNA identification and to make consequential amendments to the Criminal Code and other Acts	98/09/30	98/10/22	Legal and Constitutional Affairs	98/12/08	none	98/12/09	98/12/10	37/98
C-4	An Act to amend the Canadian Wheat Board Act and to make consequential amendments to other Acts	98/02/18	98/02/26	Agriculture and Forestry	98/05/14	five	98/05/14	98/06/11	17/98
C-5	An Act respecting cooperatives	97/12/09	97/12/16	Banking, Trade and Commerce	98/02/24	none	98/02/25	98/03/31	01/98
C-6	An Act to provide for an integrated system of land and water management in the Mackenzie Valley, to establish certain boards for that purpose and to make consequential amendments to other Acts	98/03/18	98/03/26	Aboriginal Peoples	98/06/09	none	98/06/18	98/06/18	25/98
C-7	An Act to establish the Saguenay-St.Lawrence Marine Park and to make a consequential amendment to another Act	97/11/25	97/12/02	Energy, Environment and Natural Resources	97/12/09	none	97/12/10	97/12/10	37/97
C-8	An Act respecting an accord between the Governments of Canada and the Yukon Territory relating to the administration and control of and legislative jurisdiction in respect of oil and gas	98/03/17	98/03/25	Aboriginal Peoples	98/03/31	none	98/04/01	98/05/12	05/98
C-9	An Act for making the system of Canadian ports competitive, efficient and commercially oriented, providing for the establishing of port authorities and the divesting of certain harbours and ports, for the commercialization of the St. Lawrence Seaway and ferry services and other matters related to maritime trade and transport and amending the Pilotage Act and amending and repealing other Acts as a consequence	97/12/09	98/03/26	Transport and Communications	98/05/13	none	98/05/28	98/06/11	10/98

C-10	An Act to implement a convention between Canada and Sweden, a convention between Canada and the Republic of Lithuania, a convention between Canada and the Republic of Kazakhstan, a convention between Canada and the Republic of Iceland and a convention between Canada and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to amend the Canada-Netherlands Income Tax Convention Act, 1986 and the Canada-United States Tax Convention Act, 1984	97/12/02	97/12/08	Banking, Trade and Commerce	97/12/09	none	97/12/10	97/12/10	38/97
C-11	An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof.	97/11/19	97/11/27	Banking, Trade and Commerce	97/12/04	none	97/12/08	97/12/08	36/97
C-12	An Act to amend the Royal Canadian Mounted Police Superannuation Act	98/04/28	98/04/30	Social Affairs, Science & Technology	98/06/04	none	98/06/08	98/06/11	11/98
C-13	An Act to amend the Parliament of Canada Act	97/10/30	97/11/05	Legal and Constitutional Affairs	97/11/06	none	97/11/18	97/11/27	32/97
C-15	An Act to amend the Canada Shipping Act and to make consequential amendments to other Acts	98/05/05	98/06/03	Transport and Communications	98/06/10	none	98/06/11	98/06/11	16/98
C-16	An Act to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwelings)	97/11/18	97/12/11	Legal and Constitutional Affairs	97/12/16	none	97/12/17	97/12/18	39/97
C-17	An Act to amend the Telecommunications Act and the Teleglobe Canada Reorganization and Divestiture Act	97/12/09	98/02/24	Transport and Communications	98/03/25	none	98/04/29	98/05/12	08/98
C-18	An Act to amend the Customs Act and the Criminal Code	98/02/10	98/02/18	Legal and Constitutional Affairs	98/04/02	none	98/04/28	98/05/12	07/98
C-19	An Act to amend the Canada Labour Code (Part I) and the Corporations and Labour Unions Returns Act and to make consequential amendments to other Acts	98/05/26	98/06/08	Social Affairs, Science & Technology	98/06/18	none	98/06/18	98/06/18	26/98
C-20	An Act to amend the Competition Act and to make consequential and related amendments to other Acts	98/09/24	98/11/17	Banking, Trade and Commerce	98/12/03 99/02/16	none + two at 3rd *concur in Commons amendments*	98/12/10 *Commons amendments referred to Committee 99/02/11*	99/03/11	02/99
C-21	An Act to amend the Small Business Loans Act	98/03/19	98/03/25	Banking, Trade and Commerce	98/03/26	none	98/03/31	98/03/31	04/98

C-22	An Act to Implement the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	97/11/25	97/11/26	Foreign Affairs	97/11/27	none	97/11/27	97/11/27	33/97
C-23	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31,1998	97/11/26	97/12/04	—	—	—	97/12/08	97/12/08	35/97
C-24	An Act to provide for the resumption and continuation of postal services	97/12/02	97/12/03	Committee of the whole	97/12/03	none	97/12/03	97/12/03	34/97
C-25	An Act to amend the National Defence Act and to make consequential amendments to other Acts	98/06/11	98/06/18	Legal and Constitutional Affairs	98/11/24	one	98/12/01	98/12/10	35/98
C-26	An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act	98/06/08	98/06/16	Agriculture and Forestry	98/06/18	none	98/06/18	98/06/18	22/98
C-28	An Act to amend the Income Tax Act, the Income Tax Application Rules, the Bankruptcy and Insolvency Act, the Canada Pension Plan, the Children's Special Allowances Act, the Companies' Creditors Arrangement Act, the Cultural Property Export and Import Act, the Customs Act, the Customs Tariff, the Employment Insurance Act, the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the Income Tax Conventions Interpretation Act, the Old Age Security Act, the Tax Court of Canada Act, the Tax Rebate Discounting Act, the Unemployment Insurance Act, the Western Grain Transition Payments Act and certain Acts related to the Income Tax Act	98/04/28	98/05/12	Banking, Trade and Commerce	98/06/04	none	98/06/16	98/06/18	19/98
C-29	An Act to establish the Parks Canada Agency and to amend other Acts as a consequence	98/06/03	98/06/15	Energy, the Environment and Natural Resources	98/10/20	none	98/11/19	98/12/03	31/98
C-30	An Act respecting the powers of the Mi'kmaq of Nova Scotia in relation to education	98/06/11	98/06/16	Aboriginal Peoples	98/06/18	none	98/06/18	98/06/18	24/98
C-31	An Act respecting Canada Lands Surveyors	98/05/07	98/05/26	Energy, the Environment and Natural Resources	98/06/09	none	98/06/10	98/06/11	14/98
C-33	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1998	98/03/18	98/03/25	—	—	—	98/03/26	98/03/31	02/98
C-34	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1999	98/03/18	98/03/26	—	—	—	98/03/31	98/03/31	03/98
C-35	An Act to amend the Special Import Measures Act and the Canadian International Trade Tribunal Act	98/12/07	99/02/17	Foreign Affairs	99/03/24	none	99/03/25	99/03/25	12/99
C-36	An Act to implement certain provisions of the budget tabled in Parliament on February 24, 1998	98/05/28	98/06/08	National Finance	98/06/15	none	98/06/17	98/06/18	21/98
C-37	An Act to amend the Judges Act and to make consequential amendments to other Acts	98/06/11	98/09/22	Legal and Constitutional Affairs	98/10/22	eight	98/11/04	98/11/18	30/98

C-38	An Act to amend the National Parks Act (creation of Tuktut Nogait National Park)	98/06/15	98/06/17	Energy, the Environment and Natural Resources	98/12/01	none	98/12/10	98/12/10	39/98
C-39	An Act to amend the Nunavut Act and the Constitution Act, 1867	98/06/03	98/06/08	Aboriginal Peoples	98/06/09	none	98/06/10	98/06/11	15/98
C-40	An Act respecting extradition, to amend the Canada Evidence Act, the Criminal Code, the Immigration Act and the Mutual Legal Assistance in Criminal Matters Act and to amend and repeal other Acts in consequence	98/12/02	98/12/10	Legal and Constitutional Affairs	99/03/25	none			
C-41	An Act to amend the Royal Canadian Mint Act and the Currency Act	98/12/02	98/12/09	National Finance	99/02/18	none	99/03/02	99/03/11	04/99
C-42	An Act to amend the Tobacco Act	98/12/02	98/12/08	Legal and Constitutional Affairs	98/12/10	none	98/12/10	98/12/10	38/98
C-43	An Act to establish the Canada Customs and Revenue Agency and to amend and repeal other Acts as a consequence	98/12/08	99/02/10	National Finance	99/03/18	none			
C-45	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1999	98/06/10	98/06/16	—	—	—	98/06/17	98/06/18	28/98
C-46	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1999	98/06/10	98/06/16	—	—	—	98/06/17	98/06/18	29/98
C-47	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	98/06/11	98/06/16	Banking, Trade and Commerce	98/06/17	none	98/06/18	98/06/18	23/98
C-49	An Act providing for the ratification and the bringing into effect of the Framework Agreement on First Nation Land Management	99/03/09							
C-51	An Act to amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act	98/11/18	98/12/03	Legal and Constitutional Affairs	99/03/04	none	99/03/09	99/03/11	05/99
C-52	An Act to implement the Comprehensive Nuclear Test-Ban Treaty	98/10/20	98/10/28	Foreign Affairs	98/11/18	one	98/11/24	98/12/03	32/98
C-53	An Act to increase the availability of financing for the establishment, expansion, modernization and improvement of small businesses	98/11/25	98/12/02	Banking, Trade and Commerce	98/12/08	none	98/12/09	98/12/10	36/98
C-55	An Act respecting advertising services supplied by foreign periodical publishers	99/03/16	99/03/24	Transport and Communications 99/03/25					
C-57	An Act to amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence	98/12/07	98/12/10	Legal and Constitutional Affairs	99/02/18	none	99/03/02	99/03/11	03/99
C-58	An Act to amend the Railway Safety Act and to make a consequential amendment to another Act	99/02/02	99/02/11	Transport and Communications	99/03/17	none	99/03/18	99/03/25	09/99
C-59	An Act to amend the Insurance Companies Act	98/12/10	99/02/04	Banking, Trade and Commerce	99/02/16	none	99/02/18	99/03/11	01/99
C-60	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1999	98/12/02	98/12/08	—	—	—	98/12/09	98/12/10	40/98

C-61	An Act to amend the War Veterans Allowance Act, the Pension Act, the Merchant Navy Veteran and Civilian War-related Benefits Act, the Department of Veterans Affairs Act, the Veterans Review and Appeal Board Act and the Halifax Relief Commission Pension Continuation Act and to amend certain other Acts in consequence thereof	99/03/16	99/03/18	Social Affairs, Science & Technology	99/03/23	none	99/03/24	99/03/25	10/99
C-65	An Act to amend the Federal-Provincial Fiscal Arrangements Act	99/03/11	99/03/16	National Finance	99/03/23	none	99/03/24	99/03/25	11/99
C-73	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1999	99/03/17	99/03/23	—	—	—	99/03/24	99/03/25	14/99
C-74	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/03/17	99/03/24	—	—	—	99/03/25	99/03/25	15/99
C-76	An Act to provide for the resumption and continuation of government services	99/03/24	99/03/24	Committe of the Whole 99/03/25	99/03/25	none	99/03/25	99/03/25	13/99

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-208	An Act to amend the Access to Information Act	98/11/17	99/02/11	Social Affairs, Science & Technology	99/03/11	none	99/03/16	99/03/25	16/99
C-220	An Act to amend the Criminal Code and the Copyright Act. (profit from authorship respecting a crime) (Sen. Lewis)	97/10/02	97/10/22	Legal and Constitutional Affairs	98/06/10 adopted	recommend Bill not proceed			
C-410	An Act to change the name of certain electoral districts	98/05/28	98/06/04	Legal and Constitutional Affairs	98/06/08	two	98/06/09	98/06/18	27/98
C-411	An Act to amend the Canada Elections Act	98/05/28	98/06/04	Legal and Constitutional Affairs	98/06/08	none	98/06/09	98/06/11	18/98
C-445	An Act to change the name of the electoral district of Stormont–Dundas	98/12/07	98/12/09	Legal and Constitutional Affairs	99/02/04	none	99/02/11	99/03/11	07/99
C-464	An Act to change the name of the electoral district of Sackville–Eastern Shore	98/12/07	98/12/09	Legal and Constitutional Affairs	99/02/04	none	99/02/11	99/03/11	08/99
C-465	An Act to change the name of the electoral district of Argenteuil–Papineau	98/12/07	98/12/09	Legal and Constitutional Affairs	99/02/04	none	99/02/09	99/03/11	06/99

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-6	An Act to establish a National Historic Park to commemorate the “Persons Case” (Sen. Kenny)	97/11/05	97/11/25	Energy, the Environment and Natural Resources					
S-7	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person’s religion or belief that human life is inviolable (Sen. Haidasz, P.C.)	97/11/19	97/12/02	Legal and Constitutional Affairs					

S-8	An Act to amend the Tobacco Act (content regulation) (Sen. Haidasz, P.C.)	97/11/26	97/12/17	Social Affairs, Science & Technology	98/04/30	two	Dropped from Order Paper pursuant to Rule 27(3) 98/10/01	
S-10	An Act to amend the Excise Tax Act (Sen. Di Nino)	97/12/03	98/03/19	Social Affairs, Science & Technology	98/06/03 98/12/09	none one	referred back to Committee 98/09/24	
S-11	An Act to amend the Canadian Human Rights Act in order to add social condition as a prohibited ground of discrimination (Sen. Cohen)	97/12/10	98/03/17	Legal and Constitutional Affairs	98/06/04	one	98/06/09	
S-12	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	98/02/10	98/05/06	Legal and Constitutional Affairs				
S-13	An Act to incorporate and to establish an industry levy to provide for the Canadian Anti-Smoking Youth Foundation (Sen. Kenny)	98/02/26	98/04/02	Social Affairs, Science & Technology	98/05/14	seven + two at 3rd	98/06/10	*Bill withdrawn pursuant to Commons Speaker's Ruling 98/12/02*
S-14	An Act providing for self-government by the first nations of Canada (Sen. Tkachuk)	98/03/25	98/03/31	Aboriginal Peoples				
S-15	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	98/04/02	98/06/09	Legal and Constitutional Affairs	98/06/18 report withdrawn 98/12/08	four	*Bill withdrawn 98/12/08*	
S-17	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	98/05/12	98/06/02	Legal and Constitutional Affairs				
S-19	An Act to give further recognition to the war-time service of Canadian merchant navy veterans and to provide for their fair and equitable treatment (Sen. Forrestall)	98/06/18						
S-24	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Beaudoin)	99/03/03						
S-26	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/03/10						
S-27	An Act to amend the Canada Elections Act (hours of polling at by-elections) (Sen. Lynch-Staunton)	99/03/16						

PRIVATE BILLS

S-18	An Act respecting the Alliance of Manufacturers & Exporters Canada (Sen. Kelleher, P.C.)	98/06/17	Dropped from Order Paper pursuant to Rule 27(3) 98/11/17					
S-20	An Act to amend the Act of incorporation of the Roman Catholic Episcopal Corporation of Mackenzie (Sen. Taylor)	98/09/23	98/10/29	Social Affairs, Science & Technology	98/12/03	three	98/12/09	99/03/25
S-25	An Act respecting the Certified General Accountants Association of Canada (Sen. Kirby)	99/03/04	99/03/23	Banking, Trade and Commerce				

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