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Thursday, May 31, 2012

The Honourable NOËL A. KINSELLA
Speaker

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(Daily index of proceedings appears at back of this issue).

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THE SENATE

Thursday, May 31, 2012

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

ASIAN HERITAGE MONTH

Hon. Vivienne Poy: Honourable senators, this year marks the tenth anniversary of the declaration of May as Asian Heritage Month, which took place in a formal signing ceremony on May 21, 2002.

The declaration was the result of the Senate's adoption of my motion to officially designate May as Asian Heritage Month in Canada. It was passed unanimously on December 6, 2001.

Honourable senators, this chamber played a pivotal role in bringing about the long overdue recognition of Asian Canadians' contributions to Canada.

More than two decades ago, there were already grassroots Chinese Canadian celebrations in various cities. The motion was put forward because I realized that in the last 30-odd years, Canada has become increasingly diverse, with many newcomers arriving from Asian countries. These celebrations would benefit both the newcomers and mainstream society in a shared cultural exchange.

Today, thanks to the response from our communities across Canada, Asian Heritage Month celebrations are held in Vancouver, Kelowna, Edmonton, Calgary, Winnipeg, Brandon, Ottawa, Toronto, Peterborough, Montreal, Saint John, Fredericton, Moncton, Miramichi and Charlottetown.

Canadians of Asian heritage have seized the opportunity to celebrate their cultural heritage and share it with others. As a grassroots movement, the strength of Asian Heritage Month lies with its many volunteers who organize and host events. I wish to thank all the volunteers who have achieved so much over the past decade.

Many partnerships have been formed with schools, universities and colleges, as well as with literary and performing arts organizations. It is celebrated by the federal and various provincial and municipal governments, the police services in some cities and, this year, the Scarborough General Hospital in Toronto has also joined in the celebration.

For me, the most important feature of Asian Heritage Month is education, towards which I have worked very hard. Over the years, I have been invited to speak to students from elementary schools to university levels across Canada.

Honourable senators, I am delighted that Asian Heritage Month celebrations have become an important part of our communities and our curriculum. It is also a way for the provinces to welcome and retain newcomers. Over the past 10 years, I have noticed that these celebrations have resulted in greater understanding and new friendships among members of our diverse communities.

CANADA-JAPAN INTER-PARLIAMENTARY ASSOCIATION

Hon. David Tkachuk: Honourable senators, since 1981, the Canada-Japan Inter-Parliamentary Association and its Japanese counterpart, the Japan-Canada Diet Friendship League, have provided parliamentarians from our two countries opportunities to exchange views and to learn about each other.

The Japan-Canada Diet Friendship League is that nation's largest parliamentary association, as is our association here in Canada. Their association is chaired by the Speaker of the Diet, Mr. Takahiro Yokomichi. I have the honour to serve as the association's Senate co-chair, along with Mike Wallace from the House of Commons.

I wanted to speak today because on our recent trip the Japanese insisted that we spend two days travelling through the devastated earthquake and tsunami areas. This was not really part of our program, but they insisted on it. Each community we visited conveyed to us their deep gratitude, on behalf of their communities and the people of Japan, for the assistance offered by Canadians in the days and weeks following the earthquake and the tsunami that struck in March of last year.

We were able to visit the areas that have been devastated in ways that one can only imagine and to witness the considerable progress that the Japanese have made in rebuilding their cities and towns. Their nuclear facilities have all been closed down. It is worth noting, however, that it was not the earthquake that caused the problems at Fukushima, as all the safeguards that should have kicked in during the earthquake worked, but it was the tsunami that caused the cooling system to fail.

The number of visitors, of course, to Japan has fallen, with the result that their tourism industry is suffering. Honourable senators, the Japanese would like Canadians to know that their country is safe to visit. We were able to see for ourselves that the rebuilding is well under way. I think that, because of our response, their hospitality will be second to none. I urge all Canadians who are travelling east to Asia to make sure that Japan is one of their stops.

MR. DUSTIN MILLIGAN

FORMER SENATE PAGE

Hon. Elizabeth Hubley: Honourable senators, it is always a pleasure to hear about the great work that our Senate pages go on to do after they leave us and move on with their lives. They are truly an exceptional group of young people, and I am never surprised to hear that they so often go on to accomplish interesting things.

One such former Senate page is Dustin Milligan. As honourable senators may recall, Dustin came from Tyne Valley, Prince Edward Island, to study at the University of Ottawa. He served in the Senate from 2004 to 2006 and was chief page in his last year. Since then, he has moved on to law school at McGill University and most recently has authored a series of children's books on the Charter of Rights and Freedoms.

• (1340)

Each of these books is set in a different province or territory and uses humour and Canadian cultural references to bring human rights stories to life. Characters such as Anne of Green Tomatoes, Justin Beaver and Alanis Moosette explain the rights and freedoms in the Charter in a way that is appropriate and engaging for children. They are delightfully illustrated and easy to read. It is, therefore, no surprise that they have already grabbed the attention of teachers and school boards across the country.

Dustin has been working on the series for the past five years. He has so far published six books and was recently at the Main Branch of the Ottawa Public Library for a big book launch.

I hope you will all join me in congratulating Dustin on his hard work and great accomplishment. His book series is just the kind of innovative and exceptional work that Senate pages have a reputation for.

MRS. FRANCES HELENA MUISE

Hon. Jane Cordy: Honourable senators, on International Women's Day of this year I was contacted by Norma Jean MacPhee of CJCB Radio in Sydney. She was interested in the series I had been doing in the Senate on influential Cape Breton women.

She interviewed me for the radio and also spoke to several of the women I have profiled. In the months since the interview, I have received from the listeners many suggestions of women who have made a great difference to their communities. I have even received stories about women who may not be as famous as some I have spoken about in the Senate but who are equally strong women.

I am delighted to present one such story to you today. It is from a gentleman by the name of Glen Muise who wrote to me about his mother.

Frances Helena Muise was born at Low Point outside New Waterford, Cape Breton, in August of 1927. She was the daughter of Joe and Millie Ling. Her father was a miner, a fisherman and a rum-runner, and Fran grew up with her 12 brothers and sisters during the Depression era of the 1930s. She attended Holy Angels High School and then went on to graduate from St. Joseph's School of Nursing.

Frances married Alex Muise and they had eight children. Despite a clear commitment to raising her family, much of her life still revolved around her work. Frances possessed a strong duty to her community. In the late 1950s and early 1960s she would visit the elderly and sick people in her neighbourhood — this was before medicare — and the nuns provided her with a small kit of supplies, and she would wear her nurse's uniform with a white nurse's hat, which some of us may remember. She was affectionately known as Fran 911. Sometimes a patient would slip her a rolled up $2 bill when no one was looking. This was a way to give them dignity as they loved to see her coming and they appreciated her help.

The 1960s and 1970s presented a lot of economic turmoil in industrial Cape Breton with the slowdown of the coal mines and the steel plant. Her husband, Alex, found it difficult to locate a permanent job, so it was Frances who continued to work in her nursing career and kept the family afloat, keeping oil for heat in the tank and food in the fridge.

Fran had been head nurse in every department of the New Waterford Hospital and knew her job inside out.

There was a conversation at the dinner table one evening about how underpaid nurses were compared with other jobs requiring less education that spurred her to contact her friends and form the first registered nurses association in New Waterford. She spearheaded the bargaining of their first contract. She did this with little fanfare, just because it had to be done.

Fran Muise knew almost every child that went through the hospital and rarely forgot their names. The many lives she saved were extensive, including that of her son Glen. He recalls the day when at the age of 15 his frontal lobe was struck with a sledgehammer while working a summer job. Although he was clinically dead when he was placed in front of his mother at the emergency, Frances performed emergency procedures that brought him back from death. The woman who had given him life in January of 1955 then saved it in June of 1970.

Honourable senators, Frances Muise passed away on February 22 of this year. No doubt she will be deeply missed by her family. Clearly she made a great contribution to her community of Cape Breton, and I am delighted to now know her story. I thank her son Glen for sharing it with me and for allowing me to share it with you here in the Senate. I look forward to sharing more stories with you of women from Cape Breton who have contributed significantly to their communities.

BUSINESS OF THE SENATE

The Hon. the Speaker: I will seize this opportunity to remind honourable senators that conversations are to be taken and held below the bar or outside the chamber.

ROUTINE PROCEEDINGS

INFORMATION COMMISSIONER

SPECIAL REPORT TABLED

The Hon. the Speaker: Honourable senators, pursuant to section 39 of the Access to Information Act, I have the honour to table, in both official languages, a special report entitled: *Measuring up: Improvements and ongoing concerns in access to information, 2008-09 to 2010-11.*

PUBLIC SAFETY

RCMP'S USE OF THE LAW ENFORCEMENT JUSTIFICATION PROVISIONS— 2011 ANNUAL REPORT TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2011 Annual Report on the RCMP's Use of the Law Enforcement Justification Provisions pursuant to section 25.3 of the Criminal Code.

[*Translation*]

QUESTION PERIOD

DELAYED ANSWER TO ORAL QUESTION

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the response to an oral question raised by Senator Downe on March 15, 2012, concerning the Diamond Jubilee Medal nominations.

GOVERNOR GENERAL

DIAMOND JUBILEE MEDAL NOMINATIONS

(*Response to question raised by Hon. Percy E. Downe on March 15, 2012*)

> The government provided the framework for allocating Diamond Jubilee Medals among partners to the Governor General.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, pursuant to rule 27(1), I wish to inform the Senate that when we proceed to Government Business, the Senate will address the items in the following order: first, Bill C-39 and, second, other government business as indicated on the Order Paper.

[*English*]

RESTORING RAIL SERVICE BILL

SECOND READING

Hon. Pamela Wallin moved second reading of Bill C-39, An Act to provide for the continuation and resumption of rail service operations.

She said: Honourable senators, I rise to express my support today for Bill C-39, An Act to provide for the continuation and resumption of rail service operations. This is a moderate and a measured bill. It is designed to move the parties back to the table to find agreement with the guidance of an arbitrator.

However, this story has a long history. Like many schoolchildren in Canada, I had books with pictures of Donald A. Smith driving the last spike to mark the completion of the Canadian Pacific Railway. Perhaps especially as a Prairie girl, the sound of the train, the tracks that criss-crossed our land, soon became part of our psyches.

In fact, I recall back to my very first public speech. It was in grade 4, and it was about the amazing story of the lady on the cowcatcher. The cowcatcher was just that, a metal guard attached to the front of a locomotive designed to push the cows or the deer or the moose off the tracks.

• (1350)

During a trip into western Canada on the newly completed CPR, Lady Agnes Macdonald, wife of our first prime minister, Sir John A. Macdonald, announced that she would ride from Lake Louise to the West Coast on the cowcatcher. As honourable senators can imagine, this caused much consternation both for the railway superintendent accompanying the Macdonalds and for Sir John A. himself. The lady insisted and persisted, so an empty wooden box was found beside the tracks, converted into a seat, attached to the cowcatcher and, with no shelter or protection whatsoever, there Lady Agnes rode, the ultimate front-row seat. She delightedly pronounced she would travel from summit to sea.

With all of the homework required to prepare that speech, I began to learn that this story was about much more than a tenacious first lady. Not only was the building of the Canadian Pacific Railway one of the engineering miracles of its time, many thought it was impossible. We all came to understand that this ribbon of steel was a literal link, helping to make our nation one from sea to sea, connecting peoples and communities from Montreal to the West Coast.

As I began to understand more about our country's economy, one could not help but appreciate just how important the rail is to the prosperity and future of a trading nation such as ours. This transcontinental railway, all 22,000 kilometres of it — miles in those days — was and is crucial to a trading nation. The railways gave us access to markets in every corner of the world. Today, CP Rail has direct links to eight major ports. Within North America, CP Rail's agreements with other market carriers extend the reach east of Montreal, throughout the U.S. and well into Mexico. This vast rail network, with its connection to major ports and other carriers, circulates raw materials and finished products throughout a complex transportation system that is essential to our economic system.

Today, with this rail component halted, every other part of our national transportation system is feeling the negative effect, and it is a serious threat to our still fragile economic recovery. The work stoppage is costing our country $540 million each week and could soon put thousands of Canadians out of work. If the stoppage is prolonged, it will jeopardize the survival of enterprises, large and small, from coast to coast in this country.

Let us just consider for a moment some of the products and raw materials that have stopped moving due to the shutdown. CP regularly transports coal and other forms of energy, including the components for wind energy, as well as sulfur, potash, fertilizers, industrial products, automotive parts, grain, food products, forest products and a wide range of machinery and truck trailers. This is by no means an exhaustive list, but, in fact, nearly 40 per cent of the cargo containers moving inside this country at any given time are being shipped by CP Rail.

Today, there is $50 million worth of grain sitting in elevators instead of being shipped to ports.

The big three automakers, who run on a just-in-time assembly system, are scrambling to try to get and move much-needed auto parts. If production lines go idle, it would mean $1.5 million in lost revenue every hour.

We have also been recently informed, through a report by the Rotman School of Management at the University of Toronto, that the four key Canadian bulk shipping industries that use rail transport contribute $81 billion to the Canadian GDP every year and, in doing so, support 1 million Canadian jobs. Just as a reminder, honourable senators, these four key industries are oilseed and grain farming; coal mining; wood products manufacturing; pulp and paper and paper products manufacturing.

If this work stoppage continues, there would be a significant piece of that annual GDP contribution lost, and so, too, would we lose the jobs of some of those 1 million Canadians.

As honourable senators well know, ours is increasingly a just-in-time economy, with businesses and consumers dependent on timely shipments. Of course, all businesses depend on good customer relations and, if they cannot deliver to their customers on time and as promised, then their reputation is tarnished and that, too, imposes a cost. Therefore, we cannot afford to continue to subject Canadian businesses, entire industry sectors and consumers to this kind of unnecessary risk, inconvenience and loss.

Let us consider, as well, the many thousands of individual Canadians employed by the businesses and industries whose very viability depends indirectly on reliable rail transport. Let us think about the paycheques that flow from their jobs and the families who depend on them. We cannot in good conscience ignore the human costs of this work stoppage.

To emphasize my earlier point, honourable senators, Canada is a trading nation. Our economic prospects are tied to our capacity to transport the materials and goods that we produce, buy and sell. With that capacity undermined by this work stoppage, our efforts to stimulate our recovering economy will be set back.

These, honourable senators, are just some of the reasons that I feel so strongly, so passionately about this bill for which I stand to offer support today. The future of our economy is of paramount concern to each and every Canadian and, at a time of continuing global financial uncertainty, we must continue to be vigilant in protecting our own.

Canadians have worked so hard and sacrificed so much to keep ours the strongest economy in the G8, to keep this country the place declared by the international community to be the best place in the world in which to invest and do business. Why would we undo our good work, our sacrifice and the investments in our recovering economy? Why would we continue to risk the well-being of millions of Canadians? It really is unthinkable because it is our duty to protect them, and that is the driving force behind this bill.

One cannot overstate how important this work stoppage is to the economy's supply chain and the transportation services that keep our inbound and outbound goods moving so smoothly.

Beyond that, here is an additional concern: According to the Rail Freight Service Review report of March 2011, stakeholders say that after a rail work stoppage, it can take several more weeks for operations to fully recover, to get back on track, as it were. Again, this comes at a significant cost. The consequences could be devastating for Canada's international reputation as a supplier and as a trader. If that happens, we all lose on a massive scale. If we allow a CP work stoppage to continue, we will imperil our economy. We must act to protect it. It is the lifeblood of our nation. We owe this to Canadians and to the country we cherish.

That is why I was troubled, even astounded, to hear Roger Cuzner, a Liberal Member of Parliament, rise on Tuesday night in the other place to state categorically that he does not stand with Canadians. Instead, he declared:

> We —

— the Liberals —

> — will stand with the union on this particular bill. We will stand shoulder to shoulder with the teamsters on the bill and we will vote against this back-to-work legislation.

That is a vote against the people of this country. It is a vote against the economy of this country. Why would one not stand shoulder to shoulder with all Canadian citizens whose livelihoods, incomes and work depend on the movement of goods across and through this great land?

What puzzles me is this: Liberals, when in office, when they are government, have actually been able to understand the importance of our economy and have, therefore, moved to legislate companies and employers back to work for the greater economic good. I will be happy to read the list. It goes back to 1950.

As to the number of times that Liberal governments have introduced back-to-work legislation for the greater good — the good of this country — I count 20 times, honourable senators.

• (1400)

I will provide examples: 1997, Lawrence MacAulay, resumption and continuation of postal service; 1995, maintenance of railway operations and subsidiary services, Minister Robillard; 1978, Shipping Continuation Act, André Ouellet; 1977, air traffic control services; 1974, West Coast grain handling, John Munro; maintenance of railway operations in 1973 — legislated back to work. I will go further back: 1966, maintenance of railway operations, Lester B. Pearson; and, in 1950, maintenance of railway operations, and Louis St. Laurent was Prime Minister then.

I ask honourable senators, do you stand with Canadians, as Liberal governments of the past have done, to do what needs to be done for Canadians and for the greater good, or do you stand with the narrow interests, with the teamsters and some Liberal MPs in the other place, against Canadians and the economic viability of this country?

Please follow the lead of previous governments in this country and of the government today that have shown leadership and that have stepped up to take the tough decisions. A vote in favour of Bill C-39 will end uncertainty. It will allow the complex supply chain comprised of shippers, railways, terminal operators, trucks, ports, shipping lines, farmers, business people and consumers to resume their lives and to resume operating in a predictable, reliable and efficient fashion.

Let me make it very clear that no one, and that includes every member of our government, likes back-to-work legislation. This is by no means our first or preferred option. The most appropriate role of government is to establish sensible and reasonable ground rules for negotiations, to provide for recourse if one or the other side does not bargain in good faith, or to assist the parties to reach their own settlement through the provision of expert and neutral conciliation or mediation services.

In the vast majority of circumstances, honourable senators, these principles are followed and they work well. When the Federal Mediation and Conciliation Service becomes involved, more than 94 per cent of collective negotiations in the federally regulated sector end with a settlement to which both sides have agreed.

It also holds true that when a strike or lockout does take place, the government should let it run its course. After all, it is the right of employers and workers to engage in a workplace action, and it is widely considered to be a freedom in an open and democratic society. However, as with most general principles, there must sometimes be exceptions. In certain circumstances, the public interest must be weighed against the rights of private parties to negotiate and apply pressure on each other as they see fit, when there are other consequences.

It is normal, of course, for a work stoppage to affect the parties themselves; that is the whole point of a strike or lockout. However, when the price is actually being paid by innocent third parties, and when that price is too high for individuals who work hard in this country and for this country itself, then it is our responsibility to consider limits.

The situation we are now facing is one of those rare times when an exception must be made in the national public interest. Back-to-work legislation, as I said, is never anyone's preferred option. It is used only when there is a clear threat to the health and safety of the public or to the national economy, and when every other alternative has failed to produce a settlement.

In this respect, I want to stress that our government has made serious efforts to encourage the parties to reach agreements through the negotiation process. The Labour Program's Federal Mediation and Conciliation Service has spent countless hours trying to bring about settlement. No effort has been spared in striving to help the parties arrive at a satisfactory resolution. However, despite all of these efforts, the parties remain locked in stalemate. Regrettably, there is absolutely no sign that they are ready to compromise.

Too much is at stake for this country for us to delay taking action. Watching from the sidelines is just not an option for our government or for any of us, or for those of us in this chamber, particularly today. It would not be the right thing to do. Canadians gave our government a mandate to protect our economy and to help create jobs, and we will and we must do everything in our power to keep that commitment. We have an obvious duty here as senators: We must stand up for our fellow Canadians and for our economy.

Therefore, I urge every honourable senator in this chamber to act in the best interests of our nation and in the best interests of the Canadian people by voting in favour of Bill C-39.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, here we go again. We have seen this movie before and we know how it ends — another strike, another bill legislating Canadian workers back to work. Once again, the Harper government has marched headlong into a private sector dispute to impose its will on the parties. The days of big government are back, except instead of government providing a social safety net to help workers when they find themselves out of work or to help older Canadians make ends meet with OAS, the Harper version of big government is to reach into a private dispute and bring down the heavy hammer of a new law to take away collective bargaining rights.

This is the Harper vision of Canada: Leave the workers and poor Canadians to fend for themselves, but intervene quickly to stomp on collective bargaining rights of workers trying to do their best to provide for their families.

This is now the sixth piece of back-to-work legislation that the Harper government has tabled since coming to power six years ago — the fourth in just the past year. That is quite a record, honourable senators. The last time this country saw so much back-to-work legislation was in 1991, under the Conservative government of Prime Minister Brian Mulroney.

Labour Minister Raitt likes to pay lip service to her government's respect for the collective bargaining process, but let us look at the facts. Last year, the postal workers went on strike but deliberately structured their strike action to have minimal disruption for Canadians and Canadian businesses. Management, evidently confident that the government would intervene on its side, locked the workers out. That caused disruption. The government then did exactly what management must have hoped for: They legislated the workers back to work, and on terms less favourable than those the company had already offered in negotiations.

Then came several successive labour problems at Air Canada. Most recently, the government did not wait for the pilots and others to go out on strike. I guess their motto was, "Why wait when you can legislate?" We all remember Prime Minister Harper's revealing words during the last election campaign: "I make the rules."

Of course, in the Air Canada situation his government was justifiably criticized for moving before there had even been a disruption in service at Air Canada. Therefore, this time, with the CP Rail dispute, they did wait. They held off for 10 hours after the strike began. Then they moved. Not even half a day into a legal strike, Minister Raitt announced that her government would introduce back-to-work legislation, and she had already broadly hinted in the public that she would do so.

John Ivison of the *National Post*, a journalist the Leader of the Government in the Senate has referred to approvingly in the past, wrote this on Monday:

> Canada Post appears to have been a point, Air Canada a trend and Canadian Pacific a pattern. Employers need not bother negotiating in good faith, safe in the knowledge the government will step in on their side, like some school yard bully.
>
> Part of the problem with this approach is that it settles nothing, merely pushing off the dispute into the court system, where both previous disputes remain in the hands of arbitrators.

He noted in the article that some of the leader's caucus members themselves are "uncomfortable about the rush to get involved" in the CP Rail case. He quoted one Conservative MP, who said, "We should let the process run its course. If they don't find a solution in the medium term — say two to three weeks — then step in. It's only been a week."

George Smith used to be Vice-President of Industrial Relations at CP Rail. He is now Adjunct Professor of Industrial Relations at Queens University's School of Policy Studies and will be one of the witnesses we will be able to chat with during Committee of the Whole later today. He has pointed out that the Harper government has intervened in virtually every labour dispute that occurred during their time in office. That fact becomes, in his words, "the elephant in the room" during collective bargaining. As he described it in an interview on CBC's *As It Happens* last weekend:

> The bottom line is that has a deleterious effect. There's always going to be now naysayers in the back room. Because getting a deal is never easy in these circumstances, there's going to be naysayers saying let's take our chances with back-to-work legislation and an arbitrator appointed by the government might see things our way.

• (1410)

Honourable senators, the right to collective bargaining is a fundamental right protected under the freedom of association in our Charter. Small wonder that this government assiduously avoided the thirtieth anniversary of the Charter, when its actions are increasingly being seen by Canadians as undermining the rights and freedoms enshrined in that document.

Let us be clear: It is not enough to pay lip service to collective bargaining. If you believe that disputes are best resolved by the parties themselves — if you believe that the government should only intervene in private sector disputes as a last resort — then you will undoubtedly conclude, as I have, that this back-to-work legislation at this time is simply wrong — wrong for the 5,000 workers who have lost any real right to collective bargaining, wrong for labour relations in this country, and ultimately wrong for Canada.

It is not only workers and labour unions who are concerned by the Harper government's actions; employers and major corporations recognize the long-term problems this will very likely cause.

Ian Lee, a professor at Carleton University's Sprott School of Business, who will also be appearing this afternoon, was interviewed a few days ago by *The Globe and Mail*. He said that CP and other federal employers are worried that they are losing control of the bargaining agenda and will suffer financial pain in the long term. In his words, the companies "aren't jumping for joy" at Ottawa's intervention because they want to negotiate collective agreements with labour leaders and sign contracts.

They understand that these back-to-work laws are government-imposed, short-term fixes that actually can prevent the parties from reaching negotiated settlements that all sides agree to and accept, and that then allow management and the employees to focus on the work that needs to be done, rather than on simmering labour disputes.

Benjamin Dachis and Robert Hebdon of the C.D. Howe institute — not exactly a left-wing organization — published a report in 2010 entitled *The Laws of Unintended Consequence: The Effect of Labour Legislation on Wages and Strikes*. They found that:

> . . . resort to "back-to-work" legislation reduces the likelihood of a freely settled contract in the next round of negotiations, perpetuating the cycle of government intervention.

In other words, honourable senators, this is not the way to end labour strife or of the need for government to intervene. It is the way to perpetuate it.

Barrie McKenna, the respected business columnist at *The Globe and Mail*, interviewed Mr. Dachis about this report in the context of the CP dispute. He said that the reason for this cycle is simple: Intervention lets both sides off the hook. Knowing the government is ready to step in discourages both the employer and the employees from tackling the toughest issues at the bargaining table. In his words:

> Intervention makes a freely bargained contract down the road less likely. The government not only kicks the can down the road, but makes the two sides less likely to reach a mutually agreeable outcome.

Honourable senators, this is not only bad government, this is bad public policy.

For these reasons, I will not be supporting this bill. This is not the direction we should be going with labour relations in this country.

However, I cannot conclude without acknowledging something the government has done right, although I should warn honourable senators that it is faint praise. This bill is not as bad as previous back-to-work bills presented by this government over the last year. I know it is hard to believe.

I was pleased to see that the government evidently recognized that certain clauses that were included in previous bills were, as we on this side strenuously argued at the time, simply wrong-headed. Specifically, I was relieved to see that this government did not include a final offer selection clause in Bill C-39. Equally important, the government is not, as it has done before, micromanaging the work of the arbitrator by legislating detailed terms of reference and guiding principles that the arbitrator must follow.

What is not in the bill is a small step in the right direction; but that there is a bill at all, so early in the collective bargaining process, is a giant step in the wrong direction, in my view.

The government simply should not be intervening in labour disputes at this early stage. It sends the wrong message to the parties, and ultimately it is self-defeating, as the C.D. Howe Institute has confirmed.

It is regrettable that the government is showing once again its conviction that a free market economy should operate freely for everyone, except for the workers. While it frequently expresses concern for hard-working Canadians, some hard-working Canadians count, but many — too many — simply do not. Exercise your constitutional right to join together for a stronger bargaining voice and do better for your family, and you are suddenly sidelined and marginalized. You are not the right kind of hard-working Canadian for this government. You are the kind that the heavy hand of Prime Minister Stephen Harper will brush away, as is being done again today.

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Wallace, seconded by the Honourable Senator Johnson, that the bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Hon. the Speaker: Carried, on division.

(Motion agreed to, on division, and bill read second time.)

[*Translation*]

COMMITTEE OF THE WHOLE

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

Hon. Claude Carignan (Deputy Leader of the Government): I move that this bill be referred to Committee of the Whole immediately.

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

Hon. Senators: Agreed.

Senator Carignan: Honourable senators, I request leave to suspend the application of rule 13 today.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Carignan: Honourable senators, I also request leave to propose that the committee hear each group of witnesses for a maximum of 45 minutes.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Donald H. Oliver in the chair.)

• (1420)

The Chair: Honourable senators, the Senate is now in Committee of the Whole to consider Bill C-39, An Act to Provide for the Continuation and Resumption of Rail Service Operations.

Honourables senators, rule 83 states that:

> When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it agreed, honourable senators, that rule 83 be waived?

Hon. Senators: Agreed.

Senator Carignan: Honourable senators, I ask that, pursuant to rule 21, the Honourable Lisa Raitt, Minister of Labour, be invited to participate in the proceedings of the Committee of the Whole and that government officials be authorized to accompany her.

The Chair: Is it agreed, honourable senators?

Hon. Senators: Agreed.

(Pursuant to rule 21 of the Rules of the Senate, the Honourable Lisa Raitt, Minister of Labour, and officials were escorted to seats in the Senate Chamber.)

The Chair: Minister Raitt, welcome to the Senate. I would ask you to introduce your officials and make your opening remarks. You have the floor, Minister.

[*English*]

Honourable Lisa Raitt, Minister of Labour: Thank you, I appreciate being here.

With me are my officials, the Deputy Minister of Labour, Hélène Gosselin; the Director General of the Federal Mediation and Conciliation Service, Guy Baron; and the Senior Counsel and Group Head of Human Resources and Skills Development Canada, Christian Beaulieu.

Mr. Chair, in an ideal word, parties in a dispute would settle their differences quickly and amicably. They would work hard to understand the other's point of view and, moreover, they would appreciate that their disagreement could have far-reaching consequences for people not directly involved. Armed with this knowledge and insight, they would compromise for the mutual benefit of all concerned. Unfortunately, our world is far from ideal. As a result, despite months of negotiations between the parties, we are now facing a work stoppage at CP Rail, and indeed we are entering day nine.

The strike is resonating far beyond the confines of the rail industry as we see it today. Given its impact on our economy, the government is acting in the national interest, and our actions have generated a predictable chorus of objections. We have been accused of misusing our powers and undermining the right to collective bargaining. We have been told that we are moving too quickly, and, finally, it has been suggested that the problem is not serious enough to warrant back-to-work legislation.

However, none of these objections holds water. Since 1950, the Government of Canada has consistently intervened with back-to-work legislation in the railway industry. Our actions today follow the time-honoured footsteps of many previous governments, governments that were equally concerned with shutting down all or part of the rail system.

I have been asked if I think this government is undermining the collective bargaining process many times in the past nine days, and frankly, the answer is no.

I would like to be perfectly clear that this government remains firmly convinced that collective bargaining is a far better way to resolve disputes than emergency legislation. It is significant that nothing in the legislation prevents the parties from modifying any provision in the collective agreements, new or changed.

It has been almost five months since the expiration of collective agreements covering rail traffic controllers and the running-trades employees. Like all concerned, the government had hoped that CP Rail and the two units could reach agreements to settle their differences, but this has not been the case.

On February 17, I received notices of dispute from CP Rail for both the units, which put into process provisions of the Canada Labour Code. On March 2, the labour program appointed two federal conciliation officers for both units, and they were the same ones for each unit to ensure consistency in the process. In other words, far from undermining the collective bargaining process, the Government of Canada has taken the steps set out in the Canada Labour Code to help the parties resolve their differences, providing both conciliation and mediation.

Despite these efforts, the parties remained at an impasse. On March 1 they were released from conciliation, and mediation was provided after that. My office intervened and I, along with the deputy minister, met with the parties twice in May to offer them a five-point plan for extended mediation outside of the cooling-off period to help them reach agreements and to prevent a work stoppage, and if they could not reach agreements, at least move them forward on some of the remaining issues that were on the bargaining table. These were pensions and wages, benefits and working conditions. Unfortunately, this assistance was not accepted, and as a result, on May 23 the strike began.

• (1430)

Unfortunately, the parties did not manage to reach an agreement at that point in time, and every day that they negotiated since the strike began, they did not, either. As a result, they have caused serious economic problems in our country. As the government, we took the necessary steps and we acted for Canadians and our economy because this government respects the rights of unions to strike and we respect the rights of employers to lock out their workers. We quite frankly would prefer not to interfere in the affairs of CP Rail and their employees, but we are not prepared to stand idly by as a work stoppage cripples vast sectors of our economy.

Are we moving too quickly with legislation, Mr. Chair? Absolutely not. I realize that the parties have tried to settle the various disputes, but this government is faced with a situation that requires immediate and decisive intervention. The parties have had ample time to reach an agreement and have received help from experts in mediation. Indeed, even during the strike after many days, our mediators offered both parties a

compromise position for voluntary arbitration last Sunday. It was rejected out of hand, and as a result, labour officials withdrew their services because it was determined the parties were so entrenched that they would not be able to come to any conclusion. At this point today, since that time and since the work stoppage, we have no expectation that the parties will see eye-to-eye any time soon, and indeed there are no negotiations going on. We cannot wait any longer, especially since our economy is hanging in the balance.

CP Rail has grown into a vast network of some 22,000 kilometres and operates in 13 American states as well as six of our provinces. For many farmers and miners, freight rail is the mode of choice to get their products to market just by the nature of the product, and CP Rail is the company to which they most frequently turn. In 2010, according to Transport Canada, CP Rail transported 74 per cent of this country's potash, 57 per cent of this country's wheat and 53 per cent of this country's coal. If you add it all up, the value of all the freight moved by CP Rail in Canada is nearly $50 billion every year. In 2009, the University of Toronto's Rotman School of Management issued a report. It demonstrated the important role played by four key Canadian bulk shipping industries that use freight rail. The industries that were considered were oilseed and grains, coal mining, wood product manufacturing, and pulp and paper and paper products manufacturing. The study determined that those four contribute more than $81 billion to Canada's GDP each year.

Moreover, they keep one million Canadians at work.

In other words, freight rail remains indispensable to our economy. It is not just important to the 15,000 people who work for CP Rail; it is also clearly vital to farmers, miners, forestry workers, factory workers and others who depend on the rail to help move their products across the continent and beyond and to those whose jobs are linked indirectly to the rail industry. Every day that this work stoppage drags on translates into job losses. With no trains running, the implications of this work stoppage are widespread. In addition to affecting farmers, miners and forestry workers, it is also impacting the auto sector. Auto parts are the third largest container import good that comes through the Port of Vancouver. They also come in through the Port of Montreal. This work stoppage is halting the shipment of these parts to manufacturers in Ontario, and without these parts assembly lines will slow down or stop, resulting in lost production and layoffs.

My colleagues and I had an opportunity to speak with principals in the auto industry two evenings ago. They made it very clear to us that they are facing the decision to close plants in the areas of Cambridge and Woodstock should we not move forward on this back-to-work legislation. Not only in the auto sector — do not forget that through partnerships with other modes such as shipping and trucking, the silence on these train tracks can vibrate far beyond our waters because CP Rail is a vital link in moving freight to and from Canada's West Coast ports, which are an important part of the Asia-Pacific Gateway.

This strike is preventing our ability to keep our products moving and is undermining Canada's reputation as a reliable place to do business. To give you an example, right now in the Port of Vancouver, there are six ships waiting to be filled with grain to be transported overseas, and there are eight more on the way. It takes half a day to load a ship. We have lost nine days of loading. Even when the trains do start rolling, it will take weeks for the backlog to clear; and customers do not forget this. This is a setback from which it could take years to recover lost business and lost investments.

The assertion is made that shippers can find alternate ways to move their goods. We have two Class I railways in this country. It is true that Canadian National has some capacity to move freight. CN's estimates were that it could pick up nearly 10 per cent of CP Rail's grain traffic but probably less for other sectors. The fact remains that about 20 per cent of CP Rail traffic does not have direct access to CN's rail network anyway — they do not link up. We cannot count on CN to pick up the slack during the strike; and VIA Rail cannot help fill the void because it is designed to transport passengers, not freight.

Most importantly, we cannot rely on a speedy conclusion to negotiations because they have dragged on without success; they have met an impasse; and they have broken down. We, as Parliament, as government, must act. There are 60 years of parliamentary procedure and precedence for a government to introduce back-to-work legislation in a rail industry dispute. The bill before you does not circumvent the collective bargaining process, especially considering all the support we have been giving to help the parties reach a solution. We are certainly not moving too quickly. In fact, we have copious numbers of letters from concerned stakeholders right across the country. They are telling us that the stakes are much too high to wait for the parties to have a change of heart; and they are asking us to intervene.

Finally, the rail industry is not a self-contained sector that we can leave to its own devices. It is an integral part of the economy. It is linked to other modes of transportation in a great logistics chain and to the producers who depend on rail to deliver their goods. It is an interesting fact that Canada's rail system is the third largest in the world.

The work stoppage at CP Rail is having serious repercussions, and the government cannot let it continue. There is no question that it is best for parties in a labour conflict to resolve their own differences, but the parties in the CP Rail dispute have been trying now for some time, and they have not had success. There is absolutely no reason to believe that they will be successful in the days ahead. In this time of global economic uncertainty, Canadians have given our government a strong mandate to protect the national interest. When we look closely at the implications of a strike at CP Rail, we see billions of dollars and more than a million jobs hanging in the balance. As every day goes by, the costs will increase.

In the best interests of all Canadians, the government is acting. Today, I am asking the Senate to pass Bill C-39, which will end the work stoppage and provide the parties with an interest-based binding arbitration process to help them resolve their conflicts. I urge all senators to give this bill consideration and rapid passage for the benefit of all Canadians. Thank you.

The Chair: Thank you, Madam Minister. Do any of your officials want to make an opening remark?

Ms. Raitt: No, that is fine.

The Chair: As indicated by the deputy leader at the beginning, this panel will last a maximum of 45 minutes. We have 30 minutes left. I have a lengthy list of senators, starting with the Honourable Senator Cowan.

Senator Cowan: Welcome, minister. I have two questions I would like to put. You said repeatedly, publicly and here today, that you believe that back-to-work legislation is not the ideal solution and that it is much better to have the parties freely negotiate arrangements between themselves in regular collective bargaining. You said that the government only intervenes in situations where the public interest is seriously threatened, which is the case today. You have used the figure of $540 million a week, and Senator LeBreton has used the figure of $75 million a day, and that is why your government is intervening.

My question is a simple one. You say you do not want to intervene in private disputes and that negotiated settlements are the best solution, but that here the cost to the Canadian economy is too high. What is the government's threshold for intervening in a private dispute? Is it $75 million a day or some lower figure?

• (1440)

Ms. Raitt: Thank you very much for the question, senator. Indeed, those are the numbers. In fact, one could almost say that the numbers are conservative, as it were, because they are taking into account only four of the bulk commodities that utilize rail to any extent. They are good numbers, nonetheless.

In 1995, it was estimated that a seven-day or eight-day strike cost between $3 billion and $5 billion. Economists are open about the fact that it will be hard to determine exactly what it is, but we do know it is a very large number and we do know that there are real effects happening out there.

Senator Cowan: I do not dispute that. I wonder about the threshold you use.

Ms. Raitt: Of course every strike, every work stoppage in Canada has its own repercussions and we take a look at those seriously, but one tends to see, as history will show, they are in the larger transportation networks. It is those networks that are incredibly important and linked to the economy. I would say there is no number that we look for. We do not measure in terms of an absolute number. We consider it in terms of its effect on the national economy.

The second thing I would say as well, if I may, is that there are over 400 collective agreements that are negotiated in the federal jurisdiction every year. Last year we had 13 strikes and we had two interventions. There are very good statistics of people negotiating first and getting to their deals, and our level of intervention is quite low.

Senator Cowan: I was attempting to determine whether there were some criteria you would indicate to us, and to those who have been engaged and are likely to be engaged in these kinds of disputes in the future, so that they would be able to weigh the likelihood of government intervention.

Ms. Raitt: I can give examples from the past which we have used already. In the case of Canada Post, we indicated what the cost was to the economy. In the case of Air Canada, it was two factors. It was the cost to the economy, but equally important was the effect on the public interest of the 100,000 passengers per day who would have been stranded around the country and, indeed, around the globe in the case of a shutdown of Air Canada at the time. In this case the numbers, as indicated, are clearly ones that you are not looking for a certain level. It is on a case-by-case basis. We look at the facts.

If I may say, the other thing is that it is also important to determine how close the parties are to concluding their own agreement and determining the intervention and at what point the intervention happens. Indeed, that is what happened in this case, too.

Senator Cowan: My other question relates to a comparison between this bill and Bill C-33. In that bill, you put in final offer selection arbitration. That was particularly offensive to the Air Canada unions and perhaps was the reason for their strenuous objection to the legislation.

What criteria, what logic and what reasoning did you apply in this case so that you, thankfully, did not put that restriction in the bill? Also, while you were at it, why did you not put in the restrictions on the ability of the arbitrator to deal with the issues at hand? You circumscribed that to some extent in the last bill, which you did not do here and, again, I congratulated you on that earlier this afternoon. Perhaps you could explain why it was appropriate in that case and it was not appropriate in this case.

Ms. Raitt: First, I do want to say that I do believe that interest-based and final offer selection are both very valid types of arbitration, and which one you choose to implement or which one you choose to put in our legislation is determined by the facts of the case.

If I could for a moment indicate that in this case — and it answers the second part of your question, as well — CP is an extremely private company. It has no government investment. The Government of Canada does not have a responsibility or a liability for their pension plans. The taxpayer is not involved in it at all. As a result, it is treated differently from a company such as Canada Post, which is a Crown corporation, or Air Canada, which has had government assistance.

The second thing I would also say is that the facts in Air Canada, if we can remember, were that, in the case of the IMAW, they had failed ratification. They had a conciliation commissioner who wrote a report and got them a deal and it failed on ratification. They went back to the table to try it again and again they were unable to get to a deal. In the case of the pilots, they had tentative agreement as well and it was rejected on ratification.

The parties had negotiated a longer time — much longer, almost two years — had really hashed out all of their issues, and were at the point where they could put two final offers in and an arbitrator would be able to choose.

With respect to CP Rail, the issues of pension and operational matters were not conclusively dealt with at the table and, as such, interest-based arbitration is more appropriate and that is why we put it in there.

Finally, in terms of guiding principles, again, I would remind senators that CP Rail is a private company. In fact, if you look at railway intervention legislation from this government from 2007, 2009 and now today, you do not see guiding principles in any of those bills.

Senator Cowan: Thank you.

Senator Segal: Minister, welcome. Before I ask my question, let me express my appreciation for the very hard work that you and your department have done on this issue and the clarity of your communications to Canadians about the sorts of choices you are faced with.

That being said, the long frame of government intervention before this administration and during this administration in transport-related national strikes does produce a pattern. I am sure from your own analytical frame, and as a member of the bar and business person prior to being elected, you will have the same feeling we all would that when these patterns are created over time they have to have some impact on the bargaining mindset of both sides.

Do you worry at all as minister that one of the unintended consequences of you doing what is precisely necessary in the national interest in this circumstance is to further feed the pattern that there is no real need for either side to give or bend or reach or stretch to achieve a negotiated settlement because, in the end, Her Majesty the Queen, through the able Minister of Labour, will intervene in the national interest? Why engage directly and make those kinds of undertakings, if they are going to be avoided because of the structure of a historical relationship between the federal Crown and these kinds of disputes?

Ms. Raitt: Thank you very much for your question. It is troubling to realize that this is the third time that I get to appear in Committee of the Whole here in the Senate. In fact, one of my colleagues said that I am probably the one member of Parliament who has done it the most in this past period of time.

That being said, I hear the criticism that the continued intervention is setting up a pattern. The difficulty is that intervention is only determined in order to protect the greater Canadian public interest. It is an obligation, at the end of the day, to ensure that the economy works.

Being in government, you have to make tough decisions. I hope the companies and the workers will take from what officials will say and what I will say to them very frankly at the table is "Do not count on us, do not count on the arbitrator of your choice, and do not count on the type of arbitration you want coming your way, because there are no guarantees."

Quite frankly, I would say to companies, as a former CEO, I would much rather hold the destiny of my labour agreements in my own hands through voluntary arbitration with an arbitrator that I pick than, essentially, roll the dice and let a body in Ottawa determine how important issues like pensions are going to be decided for the future of my company. This is the reality of what is happening here today.

It is not meant as criticism to CP Rail or to the Teamsters, but two years ago Minister Flaherty provided our department extra funds for preventive mediation, because we wanted to show the parties, with these difficult issues in front of them, they should start negotiating even before their collective agreement is coming to a close. They should be in there seriously talking to their employees about challenges they may be having. That is the effort we will be making. We will redouble our efforts. We watch negotiations from the very beginning, before the collective agreement expires.

In the case of CN, although in 2009 we had to table back-to-work legislation, last year CN was able to conclude their agreement before the collective agreement actually expired. That was a great success. That is because they understood that they almost let someone else make their decision. Indeed, in 2007, they let someone else make their decision on matters.

• (1450)

I would say that going to Parliament and asking for back-to-work legislation is a bad business strategy, and it does not help the companies because the uncertainty of what they could see in the legislation will always be there. At the end of the day, we are on the side of the Canadian public and the national economy, and we will determine what is most appropriate in the bill as a result of that.

Senator Segal: With CN having reached an agreement before the lapse of their prior agreement, which is a credit to both management and the unions at CN, do you worry that, in a sense, CP is being rewarded, by government intervention to solve the problem, for not having reached an agreement? CN, who competes with CP, was the beneficiary of no such support. Do you worry about unwittingly tilting the balance between Canada's two competing railways in what is a very competitive framework?

Ms. Raitt: Not at all. The legislation itself is actually quite neutral. What will happen is that the parties will go in and have an opportunity to make their best pitch, for lack of a better word. They will be able to negotiate at the table what they have in an agreement. They are ultimately leaving their future collective agreement in the hands of an arbitrator to pick some of one and some of another and cobble it together based upon the principles of arbitration and gradualism and the attempt to duplicate what would have happened had the strike gone on for a number of weeks. That is why the legislation is drafted as it is, to allow them to conclude it in the fairest way they can.

Senator Segal: Thank you.

Senator Tardif: Welcome, Madam Minister. We always appreciate your visits here in the Senate. However, it is becoming a habit.

As you have indicated, this is the third time in the period of one year that you have used back-to-work legislation to shut down labour negotiations. Your government is getting a reputation for being labour interventionists.

My question is somewhat in the same vein as Senator Segal's. Given your government's pattern of labour intervention, why would Canadian Pacific's management not have expected your government to eventually intervene and not have held back accordingly in its negotiations with the Teamsters?

Ms. Raitt: Just to clarify, we did not shut down labour negotiations; the parties can negotiate. I know that they are appearing here today. Perhaps they should have a conversation before they come in here to see you, but they can continue to negotiate. They can negotiate even when the legislation is passed. They have the ability to do their own deal, right up to the point of the arbitrator setting out his or her report.

That being said, it is an extraordinary measure in the history of Canada's Parliament, and it has been used 36 times, predominantly in the transportation sector.

There was another cluster of back-to-work legislation that occurred in the mid-1990s, three times in a period of 13 months. Two ministers had to come in and ask for back-to-work legislation, in the case of the West Coast ports, for both the foremen and for the longshore workers in 1994-95. Again, they had to come in for a massive shutdown of the railway — CP, CN and VIA — in 1995 as well. One could say that I, at least, get a respite. I was last here in March. In 1995, the minister at the time had to come in here one week after another. It was one week for one and then the next week for the next one.

These things can and do happen when collective agreements are expiring and when important issues are at the table. Taking a lesson from history, government intervention is consistent in major strikes like rail, ports or air traffic. However, it is not continuous. Indeed, CP Rail, since 1995, has negotiated its own collective agreements every single time.

Senator Tardif: I believe that the 1995 situation was somewhat different. It included all three national rail companies — CP, CN and VIA — and some 30,000 unionized rail workers, compared with 4,800 today. That is quite a bit of a difference. It effectively shut down the entire Canadian rail system, and CP Rail workers were doing rolling strikes for five days before they were locked out. In this case, the situation is somewhat different.

Professor George Smith, a former director of labour relations at Air Canada and vice-president of human resources at CP Rail, will be appearing before us later on this afternoon. He has said:

> This has all the appearances of the federal government doing what is best for the country but really it is a disaster. If you are negotiating a difficult labour contract, the process is being taken out of your hands and the government will do it for you. The showdown element which hurts in the short run but which results in a fair settlement is gone.

We have seen that so-called showdown element start to evaporate ever more quickly since your government has come to power because of the reasonable expectation of management that your government will ultimately intervene.

As you have indicated, labour disputes are never easy or simple. I can understand the difficult dilemma you face with every new dispute. However, with all due respect, do you not worry that these dilemmas are starting to become partly of your own doing?

Ms. Raitt: My worry is for the families of the workers who, through no fault of their own, are laid off because of an ongoing rail strike. I do agree that the rail issue in 1995 was dire, but it was allowed to get to that point. Perhaps better intervention, at an earlier time when there was an economic impact, should have happened. The Prime Minister said in 1995, as a member of Parliament, that the criticism was that the government of the day did not act quickly enough. I agree with that sentiment. That is why we are very closely attuned to the needs of the economy. Canadians gave us that mandate, and, as a result, we watch very closely to ensure that we do not get to that situation where we have that kind of gross and disproportionate economic effect on Canadian families.

In that case as well, four plants did shut down, which had a serious economic impact on southern Ontario. Buzz Hargrove was, at the time, in favour of the back-to-work legislation because of the economic impact that the strike was having.

In our case, in 2012, we see what the impact is because we can learn from history, and we do not want to repeat that disaster.

[*Translation*]

Senator Carignan: The government is often criticized for frequently intervening — although it has happened only three times — in the bargaining process.

I would like to tell you about the situation in Quebec, where we do not hear about this kind of special legislation as often, because the Quebec Labour Code has a section that addresses essential services. In those areas, strikes and lockouts are prohibited unless essential services are maintained. I have the list, and this section includes telephone companies, which, if they are regional, come under provincial jurisdiction. This list also includes enterprises that produce, transport, distribute or sell gas, as well as land transport services such as a subway or bus and boat transportation services. When workers want to strike in those areas, essential services must be maintained, otherwise, they will be engaging in an illegal strike or lockout.

Strikes and lockouts are also illegal in police services, for instance. Thus, in various domains, strikes and lockouts are completely prohibited. Such cases are a long way from negotiation. There are also other situations involving important essential services. Sometimes up to 90 per cent of the service must be maintained, depending on the ruling by the essential services division of the commission.

• (1500)

I believe that these provisions are more harmful to free bargaining than the Canada Labour Code, because the federal government only intervenes occasionally and selectively.

However, is the government thinking about this plan of prohibiting strikes or lockouts in certain fields or about reviewing the conditions for essential services in these fields, in order to reduce the passage of special legislation? If so, where are we on that? If not, why not?

[*English*]

Ms. Raitt: Thank you very much. Under the Canada Labour Code, essential services are limited to health and safety matters. If it is an immediate and serious danger to the health and safety of the Canadian public or of the public, then a service can be deemed essential and activities have to be maintained. We do not have that situation in the case of CP Rail today.

We always look at it. When there is going to be a strike or a lockout, we always look and determine within the department whether or not there is a health and safety aspect to it. In this case, the parties agreed that there was none, and we agreed with the parties that there was no health and safety aspect.

Our intervention is based upon the economy, and the Labour Code does not allow the definition of essential services to include anything that affects the economy. It is very limited.

I appreciate your point of view, and I am aware of other legislation in other provinces that deals with it in a different way by deeming it, but I would say that from an instinctive point of view, the one thing we can see specifically speaking to rail is that the industry changes and there is competitiveness. The structure of the industry may be different three years from now and may be different five years from now, so it is more appropriate in this case to approach it from a back-to-work legislation point of view than it is to seek out any changes to the Canada Labour Code that would be needed.

That being said, it is an open topic of discussion for myself at my ministerial advisory committee, and that includes academics and union and labour representatives. At this point in time, they do not believe that their workplaces would like to have that kind of legislation.

That being said, health and safety is the priority of this government, so we want to ensure we are doing the right things and continuing to foster economic growth. I take your comments and would love to talk with you again about it. I am always happy to have discussions about how we can move policy forward and make it better for the country.

[*Translation*]

Senator Rivest: Madam Minister, I listened to your answers, in particular the answers you gave to Senator Cowan. I am concerned about the government's policy with respect to the right to strike in the public or quasi-public sectors that fall under the Canada Labour Code.

You said that, with respect to Canada Post, Air Canada or CP, you had assessed the costs of the right to strike and that you determined that the costs were so prohibitive that, in the best interests of the country, you would intervene to put an end to the strike.

The labour code recognizes that workers in these sectors have the right to strike. You have intervened in three sectors in recent months. If you believe that the right to strike causes serious damage to the economy, why, as Minister of Labour, do you maintain the right to strike of workers in these sectors whose right to strike causes irreparable damage to the economy? For these workers, what is the point of having their right to strike recognized? You made a judgement call in these three cases. We can imagine that there could be strikes by air traffic controllers, by workers at port facilities, and so on. Will it be the same thing?

In response to Senator Carignan, you said that essential services within the meaning of the Labour Code are an open topic of discussion. Will the new direction the government is taking on the right to strike be part of that discussion?

I would like to remind you, Minister, that the right to strike — and surely you know this better than I do — is a consequence of the right of association and the right to free collective bargaining. Clearly the right to strike always causes inconveniences. If not, there would be no point to it. Its point is to exert pressure. I am not asking for a definitive response, but what is the current status of the discussion?

As a result of your actions, the labour movement is extremely worried that the current government could challenge the right to strike.

You spoke a lot about the interests of businesses and the economy, but there are also the interests of workers. The demands being made by workers at Canada Post, Air Canada and CP Rail must be taken into consideration. In the past, we decided that the way to take those demands into account was through fully recognizing the right of association, the right to free collective bargaining and the right to strike.

Can you reassure all unionized workers in Canada, in the public and public services sectors, that the right to strike is still a value in which the government believes?

[*English*]

Ms. Raitt: Thank you for the question, senator. I cannot speak to the public sector. In my role as Minister of Labour, I work with the federally regulated private sector, so my comments are distinct for that.

It is very true, and you put it extremely well, that the government looks at the prohibitive costs to the economy when you balance it in terms of the rights of the workers to strike. In this case, we did not act until day six of the strike in hopes that we could get the parties to some kind of an agreement or a voluntary arbitration process. When we realized that that was not going to happen, the costs become extraordinarily prohibitive because you see no end to the strike and you realize that they have no way to find their way through the process.

It is not just an effect on the company. I agree that a strike is an economic tool of withdrawing services from the company in order to make the company come back to the table to do the deal, but it had the effect on the greater Canadian public to such an extreme that it begs for governmental intervention. Indeed, we view it as

our obligation. It is more than merely inconvenience that the Canadian public is experiencing. They are experiencing severe consequences because of an inability of two parties at a bargaining table to get a deal.

I will tell you that there are no changes planned at this time. I have no plans to change the Canada Labour Code. A number of years ago, our government did commission the Annis report. It was a very comprehensive report talking about what changes, if any, would come to the Canada Labour Code. I will tell you that there was no consensus among the parties as to what to do with respect to Part I of the code. Moreover, the parties actually thought that the code met their expectations, helped them in their day-to-day activities, helped both employers and unions, and set the appropriate framework. That is why I say we have no plans to change policy. We will continue to analyze and assess the effect that a strike or lockout would have on the Canadian economy and the Canadian public interest and treat them on a case-by-case basis.

That being said, we are putting great efforts into preventive mediation and to help the parties through either conciliation, commissions, through officers.

If I may, in terms of the West Coast ports, I am actually very proud of the work that our department did in that both for the longshoremen and for the foremen of the ILWU with the B.C. Maritime Employers Association. They were struggling to get a deal, and they were without a deal for about two and a half years. We used some very creative means within the Labour Code to appoint a preeminent retired judge to help the parties, and the parties submitted to this voluntary mediation. As a result, they ended up with an extraordinary eight-year deal on the West Coast ports to ensure the stability of the Asia Pacific Gateway in both unions. That is the good news that happens when you allow people to find their time at the table. That is why I always say it is the best result you can get.

• (1510)

However, the parties needed to voluntarily submit, because the Canada Labour Code gives the minister zero power to intervene, other than through the tools in the Canada Labour Code. Therefore, we need to work with the parties, and we will continue to do so. I wish in this case that the parties had taken the offer of the officials for a voluntary arbitration on a compromise position so that we could have avoided this.

[*Translation*]

The Chair: Madam Minister, on behalf of all the senators, I thank you for joining us today and for helping us with our work on this bill. I would also like to thank the employees from your department.

Senator Carignan: Honourable senators, I ask that we invite the next witnesses, the representatives of the employer, to participate in the deliberations of the Committee of the Whole.

The Chair: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*English*]

The Chair: Mr. Peter Edwards, Vice-President Human Resources and Industrial Relations, Canadian Pacific Railway Limited, and Mr. Mike Franczak, Executive Vice-President and Chief Operations Officer, I welcome you to the Senate of Canada. I would invite you to further introduce yourselves for the record and then to make your opening remarks. Following your opening remarks, honourable senators will have some questions they wish to pose to you. You now have the floor. Welcome again.

Mike Franczak, Executive Vice-President and Chief Operations Officer, Canadian Pacific Railway Limited: Honourable senators, I am the Executive Vice-President and Chief Operations Officer of Canadian Pacific Railway, and I am joined today by Peter Edwards, Vice-President of Human Resources and Industrial Relations.

During these important negotiations with the Teamsters, running trades employees and rail traffic controllers, I have been personally involved and have sat directly at the negotiating table. We very much appreciate the invitation to appear before you today to discuss this important issue and urge you to move today to pass Bill C-39. The current strike is having a direct negative impact on the Canadian economy, our customers, our employees and our company. Every hour matters and, hence, we ask you to act with urgency.

Canadian Pacific operates a transcontinental railway in Canada and the United States, and provides logistics and supply-chain expertise. We originate 10,000 shipments per day for 3,000 customers. With over 17,000 employees, we operate a network of approximately 24,000 kilometres, serving the principal business centres of Canada, from Montreal to Vancouver, as well as the Northeast and Midwest regions of the United States.

We transport bulk commodities, merchandise freight and intermodal traffic. Bulk commodities include grain, coal, sulphur and fertilizers. Merchandise freight consists of finished vehicles and automotive parts, as well as forest, industrial and consumer products. Intermodal traffic consists largely of high-value, time-sensitive retail goods in overseas and domestic containers that can be transported by a combination of train, ship and truck.

Intercity passenger service in Vancouver, Toronto and Montreal also operates all or in part on Canadian Pacific. In a good-faith gesture, we allowed those commuter operations to continue during this strike.

It is clear that Canadian Pacific is a core enabler of the Canadian economy, moving people and shipping commodities worth $135 million every day. We must get back to moving the nation's commerce.

I will now turn things over to Peter Edwards, who will discuss our negotiations to date.

Peter Edwards, Vice-President Human Resources and Industrial Relations, Canadian Pacific Railway Limited: Mr. Chair and honourable senators, to begin, I would like to make it very clear that CP entered these negotiations in good faith, and we continue

to conduct ourselves in that manner. At CP, we have a long history of collective bargaining and work stoppages are the exception, not the norm. It has been 17 years and dozens of ratified collective agreements since the government had to introduce legislation to end a work stoppage at CP, and that was part of an industry-wide, back-to-work legislation. I should also point out that in the interim, the three strikes we have had have all been with Teamsters-represented employees.

Where did it begin? These negotiations started in October 2011. Since then, we have met 10 times, for 55 days, in five cities across Canada. Over these seven months, CP has tabled numerous offers on the key issues. It should be noted that we made very little headway in the early months and, for that reason, CP requested the service of the Federal Mediation and Conciliation Service in February.

With the assistance of the FMCS mediators and conciliators, progress was made and, as conciliation drew to a close, we stood ready to extend the negotiations or to agree to an arbitrated process between the parties, with rules that we could mutually agree upon. The Teamsters would not agree to either.

The key issue that remained was, and is, the future levels of our defined benefit pension plans for active Teamster employees. We had made progress on the issue with the Teamsters; however, there remained a gap. While we continued to negotiate on this issue, the Teamsters struck.

CP faces a huge challenge related to the solvency of its defined benefit pension plan. We are not alone in having this challenge and, like other defined benefit plan sponsors, we have taken direct action to address it. For example, in addition to the $229 million in current annual service costs, CP has paid $1.9 billion over the last three years towards solvency deficits. CP is a responsible plan sponsor. Despite this, we still have a substantial deficit, which is expected to grow.

The $1.9 billion is double our annual capital expenditures, which are generally 20 per cent of revenue. This is the highest of any business sector. Yet, our solvency liability continues to grow. This is not sustainable.

Honourable senators, plan design is the core issue. The problem has been compounded by current economic conditions, including low long bond rates, volatile equity markets and increased longevity. Each of these will continue to increase the liability and require large funding amounts well into the future.

• (1520)

This pension liability increases our cost of capital by affecting our credit rating. It increases our stock volatility and our ability to compete in capital markets when compared to our railway peers.

The teamsters have been saying we have been waiting for others to fix our problems. This is simply not true. To reduce our future costs and exposure to volatile market conditions, we are doing everything we can to control our pension requirements, including closing the plan to new non-union members. Their only option now is a defined contribution pension plan.

The next necessary step in addressing the problem is limiting the amount of overtime in the pension calculation and bringing our plan's provisions closer in line with all other North American railways.

Even with our proposed changes, our negotiating position results in a plan that is more generous than our main competitor. This is the issue we are negotiating in good faith, a tough one that unfortunately we have been unable to resolve so far.

I also want to make it very clear that we have never attempted to reduce the benefits payable to current pensioners or the benefits employees have earned to date. Employees that are close to retirement would only be marginally impacted. We do need, however, to address our multi-billion dollar future solvency liability.

Currently, a top-ranked CP locomotive engineer receives a maximum annual pension of $93,000, approximately. That is not including CPP and OAS. To put that number in perspective, the average Canadian working wage is $44,000, and in 2009, the average private pension plan income for Canadians aged 55 to 64 was $26,500.

CP unionized wages and salaries are comparable to CN, but in terms of pension, the gap is very wide. A teamster-represented employee at CN has a capped annual pension of $60,000, still well above the Canadian average. The difference between the maximum possible teamster-represented CN pension and the CP teamster-represented maximum pension is therefore more than $32,000, or 50 per cent higher at CP, and growing. Compared to their American colleagues, a CP running trades employee with a maximum total pension of $93,000 would receive more than four times what you would receive with a U.S. railroad.

Let me highlight that this week the teamsters in CN announced they had concluded a new collective agreement, one which perpetuates the $60,000 cap. They have done a number of these this year. Our goal in the negotiations was to reduce the gap with our competitors, not eliminate it. Throughout the talks, we also bargained on other matters — health spending accounts and work rule proposals. These are important issues and our proposals are more generous than those of CN, as acknowledged by the teamsters. The real issue here is an unsustainable defined benefit pension plan, one that jeopardizes the near-term and long-term viability and the competitiveness of CP.

Now, let me turn back to Mr. Franczak to summarize the impact this teamster strike is having on our economy and our company.

Mr. Franczak: The impact of the teamster's work stoppage to the Canadian economy is extensive and affects many sectors that are critical to Canadian competitiveness and participation in world trade. The strike is impacting everything from the movement of prairie grain for export, metallurgical coal to world markets and even food to the nation's grocery stores. Many plants have been shut down across Canada, including chemical production, grain processing and manufacturing sectors.

The number of our customers experiencing extreme stress increases substantially each day the work stoppage continues, and the global reputation for Canada in terms of supply chain reliability diminishes. Currently, we have now impacted 64 automotive distribution facilities, and with facility shutdowns come layoffs, including the over 2,000 other workers at CP alone. With every hour of delay in restoring rail service, there is an increasing damage to the Canadian economy. Even if legislation is passed, it will take time to safely return to full service levels for all of our customers.

For the foregoing reasons, we urge you to end this strike now. The current work stoppage is having a direct negative impact on the Canadian economy, our customers, our employees, our company, and is affecting its long-term competitiveness. Once our employees return to work, we remain committed to good faith resolution of the important issues at the table. Every hour matters and we ask you to act with urgency.

We thank you for this opportunity and we welcome now any questions you may have.

The Chair: Thank you both very much.

Before calling for questions, I want to remind honourable senators that under the order of the Senate I have an obligation to terminate debate on this panel when 45 minutes has expired.

Senator Seth: Mr. Edwards, it has been made clear that Canadian industries cannot afford a continuation of rail strikes at $540 million a week. Can you tell us if you are thinking of the millions of Canadian families, including your own, that will be negatively affected by this strike? How much longer will CP Rail hold Canada's economy hostage if legislation is not passed to get trains moving again?

Mr. Edwards: Honourable senator, thank you for the question. We did not seek the strike. We did not lock employees out. In fact, we remain committed to going back to the bargaining table and continuing to discuss with our unions a settlement that is sustainable for CP and fair and equitable for the members.

Senator Campbell: Did CP negotiate the pensions that we are talking about here?

Mr. Edwards: The lack of a cap, no. The fact it got to $93,000 was not negotiated.

Senator Campbell: How did it get there?

Mr. Edwards: That was accidental, actually.

Senator Campbell: It was accidental? The $93,000 was an accident?

Mr. Edwards: In the sense that when the pension legislation was changed to allow a moving cap — that was done by the federal government — CP elected to do an automatic escalation. This was not negotiated. Our competitors did not and chose to stick with the cap that was put in place at that time and not adjust it, so ours has been escalating in an unconstrained fashion.

Senator Campbell: Would you agree that we find ourselves here in the middle of a strike because of the poor business habits of CP?

Mr. Edwards: I cannot comment on what was done in the past.

Senator Campbell: No. We keep talking about the past here; we keep talking about past strikes. I am in a quandary with regard to how CN gets to have their pension down to $60,000. I agree with you that $60,000 is still a very substantial pension. There is no question about it. However, I would like to know how we end up on a strike because of pensions that you in fact are responsible for.

Mr. Edwards: Many pension plans across Canada, defined benefit pension plans, are facing the same challenge.

Senator Campbell: I am not asking about anybody else; I am asking about you.

Mr. Edwards: Okay. I am trying to understand the question, senator.

Senator Campbell: The question I have is that you find yourself in an untenable position from a business point of view because of high pension caps.

Mr. Edwards: Yes.

Senator Campbell: Your company made a business decision to go with that rather than another route, as CN did.

Mr. Edwards: Yes, sir.

Senator Campbell: Therefore, we are basically being asked to help you out of a huge bind that is of your own making.

Mr. Edwards: The problem not only exists for us; it exists for other companies as well.

Senator Campbell: No other companies are here. I can only hope your new board can get this straightened out because clearly the last one did not.

• (1530)

Senator Wallin: We have been looking at the implications of this work stoppage on the economy in the short term — $540 million per week. In straight up costs, we have $50 million worth of grains sitting in elevators instead of on the rail. The thing that has troubled me is that even if this legislation were to be passed 10 minutes from now, you still have to get things back on track. In those days, we will see the difference between people having jobs and not, companies keeping doors open and not. How long does it take you to get back on track, as it were?

Mr. Franczak: It will take approximately two to three days of full operation to begin to restore service and volume levels to their pre-strike levels. Once legislation is passed and the appropriate time is upon us, we would begin to have to position crews to man trains. We would have to begin the process of inspecting trains for departure, main tracks and so forth. It is a very deliberate, staged,

safe start-up to resume operations. It will take at least two to three days before we are back to pre-strike levels. It will take some time again to try to work off the backlog fully.

Senator Wallin: That was my next question. You have a lot of goods sitting there.

Mr. Franczak: Clearly, some business has gone over to CN during this work stoppage. We will not see that business back on our lines. There is, however, to your point, grain in inland terminals, and containers in ports in Vancouver and Montreal, for example, that are waiting to be moved. Honda is full in terms of the number of vehicles they have on the ground representing several days of production. All of that will have to be worked off and moved in the coming weeks.

Senator Wallin: I think that is one of the other concerns, particularly in the just-in-time sector. The auto industries themselves have said that if you start to shut down a production line, that is a huge number instantly, more than $1 million an hour, and then you have to try to kick-start that again. These are big numbers out there. Do you think the figures we are using are close? I do not know what you are using in terms of costs.

Mr. Franczak: They are very similar, senator.

Senator Munson: There is no doubt that this afternoon, with the government numbers, this bill will pass. I do not know about collective bargaining, if there is any in this country any longer. You can have the government legislate away your pension problems, but when you are back at work with your workers, I am sort of concerned about mood and motivation. We have seen the results of the Air Canada strike and their being legislated back, the mood that is taking place and the feeling amongst pilots and flight attendants. You see that in the service and every day.

Once this legislation is passed, how do you see relations between management, the workers and the labourers, the people who actually keep the railway running? Do you see it more damaged or relatively unchanged? Could you talk a bit about those plans with respect to industrial relations, or as I would rather put it, human relations, getting up each and every morning and saying, "Yes, I want to go to work for this company"?

Mr. Edwards: Thank you for the question. After this bill is passed, if this bill is passed, the problem is not gone. We have a pension plan that we had to put $1.9 billion in. We continue to put more money in. The problem continues to grow. We have to put as well $224 million per year in current service costs. The problem continues. The difference between us and our primary competitor is still huge. Even after our proposals, it will still be big.

We were not looking to have a work stoppage. We asked for an extension of 14 days. We agreed to an extension of 120 days. We said we would meet on terms agreeable to both parties before legislation, months ago, saying, "Let us sit down." Sometimes, even the most reasonable of people cannot agree on an issue because the issue is too difficult. Internal politics, perhaps with the union, make that decision to accept something we are offering very difficult. Sometimes a third party is needed. It is not the first choice, but it is an intelligent choice.

I think our first action will be to go back to the table. I have told my people to be ready. The passage of this legislation, while putting people back to work and ensuring that the Canadian economy will be back on the track to health and success, is an important part, but renewing our relationship with our unions, continuing those negotiations right up until the time, perhaps, that an arbitration award is awarded, if we cannot settle before then, is something we will do. Why? I would rather have a deal that we can strike, but we cannot have the Canadian economy suffer because reasonable people cannot agree on a deal.

Senator Munson: Does CP make money each year or lose money each year?

Mr. Edwards: You will need to talk to the financial people about that. I will tell you that last year we had a negative free cash flow of $724 million, and $600 million of that was related to pension. The quick lesson on finance is that $724 million more went out than came in. That is not sustainable.

Mr. Franczak: It is important to note also that we did have to borrow to deal with that funding issue. Our credit rating is now BBB-, one level above junk. This is a serious issue for us. We will find it impossible to continue to maintain the level of investment we need as a company to remain competitive, to drive safety and efficiency further into our business, to grow and prosper as an ongoing entity.

Senator Munson: Do you think that this legislation will help alleviate what you describe as negative impact?

Mr. Edwards: I think we will put something to an intelligent person and ask for their help. I hope it helps. What we are asking is for more than they get everywhere else. We are offering a pension today than is more than they get at CN, and according to the CEO of CN this morning in the paper, he has no intention of increasing theirs. Ours will be better. Our health spending account will be better. Our terms and conditions will be better. Those are the rules we have on the table.

Our operating ratio is above 80. The competition's starts with a 6.

Senator Munson: Is it profit or people?

Mr. Edwards: Pardon?

Senator Munson: Is it profit or people that we are talking about here? The bottom line, I guess, is it is profit for CP; is that right?

Mr. Edwards: Any great organization is driven by its people. I think we all agree on that. That is why we are ready and willing to go back to the table when our employees come back to work to continue to negotiate.

Senator Segal: I have a brief question for our guests from Canadian Pacific. I think earlier one of you indicated that you would have liked to have seen a further extension to negotiations. I was led to believe — I may be mistaken and I am glad to be corrected — the government suggested and was prepared to support an extension to negotiations of 120 days and that both

management and the unions turned that proposition down. If that is incorrect, I offer you a chance to put the correct fact on the record.

Mr. Edwards: We offered to extend long before the strike occurred. Back in Vancouver was the first time we talked about some alternative dispute resolution. We offered extensions a number of times, 14 days, 120 days. The last part, which perhaps the minister is referring to, was just a few days ago when the Federal Mediation and Conciliation Service — we are thankful for their services — presented us with a document and said, "This is a take it or leave it; can you take it or leave it with the words exactly as is?" At first we thought, "No." Then we saw it with sober second thought and we said to ourselves that, with a couple of small modifications, we could live with it. It is not everything we want. We do not like it, but for the purposes of moving the process forward, we can live with it. I met one-on-one with Doug Finnson, the teamsters' head, and he said "Well, we cannot."

• (1540)

We agreed at that point in time that there was no use in meeting and that we could meet again in the future. I think that would be the answer.

Senator Segal: Thank you.

[*Translation*]

Senator Dallaire: My question is about your competitors. First, given the fact that all of the industries affected by this strike are suffering greatly because you cannot transport their products, could your competitor, CN, not step in?

Second, have these companies threatened to take their business elsewhere?

Third, have they considered using trucking companies? What feedback have your clients given you about the future of their contracts with your company?

[*English*]

Mr. Franczak: Thank you for that question. CN has been able to move some Canadian Pacific traffic. They have been able to move, for example, some container business off the Port of Vancouver, as well as some of the potash business that we would normally carry to that port.

Alternatives, however, are limited for the vast majority of our customers. Trucking is not generally an option, especially for those with large bulk shipments to make. CN's ability to move more product to Vancouver is limited by the fact that our side of the co-production zone — we operate between Kamloops and Vancouver, for example — has been shut down as a result of the strike.

In effect, the vast majority of our customers have not had an alternative in terms of moving their product either by truck or by CN, and it is necessary for us to get Canadian Pacific back to work so they may be able to move their products to their destinations.

Senator Lang: I would like to follow up on Senator Munson's line of questioning.

Perhaps you could elaborate further with respect to looking into the future, citing the numbers you cited and the fact that your competitors obviously have a significantly more competitive edge than you have, in view of your financial situation. The following question must be asked, even with this legislation: In the long term, will you be able to stay in business?

Mr. Franczak: I will address that. At first I would like to come back to some earlier comments and questions about the nature of the challenge we have.

It is important to note that up until about 2008, Canadian Pacific's funding of the pension plan was actually in a slight surplus situation. The structural or design issues we have with our plan, those decisions with respect to caps and escalation clauses, date back decades. That is what Mr. Edwards was referring to earlier.

The issues we have come upon are a result of the escalators and the caps that were put in place decades ago. They are also a result of the impact of the low long bond rates, the low equity returns we have been able to realize for the pension plan.

It is also important to note that, notwithstanding that, Canadian Pacific's equity returns are in the top 10 percentile of all equity returns for plans of this nature. This was not something we had planned for or something that was consciously done. As Mr. Edwards noted, this is an issue many defined benefit plan sponsors are faced with right now.

With respect to the kinds of numbers in the future that we will be required to fund, they are in the hundreds of millions of dollars. This is money that should be going into reinvesting in our infrastructure, long sidings for enabling growth and driving more efficiencies. This is about ensuring that our franchise remains a competitive and viable transportation system as part of the overall Canadian transportation network. We are a vital link in terms of the Asia Pacific Gateway. If we are unable to compete efficiently and for capital in the markets because of debt ratings and the cost of capital, which is rising for us because we are servicing this level of pension, over time it will become impossible for us to compete, to remain efficient, to grow and to remain an integral part of our transportation network.

Senator Zimmer: Thank you, gentlemen, for your presentation. I want to follow up on the questions raised by Senator Campbell and Senator Munson, specifically on the pensions. Is this horse out of the barn, or is it out of the corral already and you can never lasso it back in? Do you have a plan for the future where you can bring this back into reality, and is your solution in negotiation? If it is, they will not give up that territory.

Do you have a plan in the near future to bring it back to reality, or is it gone forever?

Mr. Edwards: Thank you for that excellent question. We have a multi-part plan. An investment strategy is part of it. We have the payment of the insolvency, which is part of it, and we have a negotiation strategy. All three of these are important.

If you look at our negotiation strategy, there has been movement. With all due respect, the teamsters have said to us that they recognize the problem. They offered a new introductory rate and some other things. We went back and forth, and we were still talking about the issues when the strike occurred.

I do not think this issue is done or that the game is over. I think it is important to deal with because it is important for the future of CP.

Mr. Franczak: As I noted, in 2008, as we started moving into the recession and this problem became very apparent to us, changes were initiated some years ago with respect to management's defined benefit plan. All new management employees are now in a defined contribution plan that has resulted in about $140 million of positive impact in terms of pension liability on a forward basis. We have taken that action, as well as a number of others, including payments into the plan, to ensure we are dealing with the deficits that we are facing.

Senator Zimmer: Thank you very much and good luck.

The Chair: Honourable senators, I have no further names on my list. Are there any other honourable senators wishing to pose questions to these two witnesses at this time?

[*Translation*]

Senator Dagenais: My question is for the Vice-President of Human Resources. You talked about your pension plan and said that it is very expensive because it is a defined benefit plan.

I imagine that, like many employers, you conduct actuarial assessments every two or three years, and that the actuaries recommended maintaining or perhaps increasing employee contribution rates to make your pension plan sustainable. I do not understand how you can say that you will be forced to invest maximum dollars in the pension plan because of the way it was managed.

Is there a banker's clause requiring you to cover the costs if there is a shortfall?

[*English*]

Mr. Edwards: Yes, we do. The company bears the responsibility in a defined benefit pension plan to cover any shortfalls. That is why we have had $1.9 billion in insolvency payments. It has grown to such an extent that the value of our total pension obligations is around $10 billion, which, depending on how you calculate it, is about 80 to 83 per cent value of the entire company.

The Chair: There being no further questions, it remains for me to say to the two witnesses that, on behalf of all senators, we thank you very much for joining us today to assist us with our work on this bill.

• (1550)

[*Translation*]

Senator Carignan: I would now like to invite the representative for the Teamsters Canada Rail Conference, Mr. Phil Benson.

[*English*]

The Chair: We have before us, honourable senators, Phil Benson of the Teamsters Canada Rail Conference.

Welcome to the Senate, Mr. Benson. I invite you to make some opening remarks. After you have made your remarks, honourable senators may have some questions that they wish to pose to you.

You now have the floor. Please proceed.

Phil Benson, Teamsters Canada Rail Conference: Thank you very much, Mr. Chair, and thank you to the Senate for having us before you. Teamsters Canada Rail Conference Locomotive Engineers represents about 5,000 locomotive engineers and rail traffic controllers at CP. However, overall, the Teamsters Canada Rail Conference and Teamsters represent about 65 per cent of rail labour. Teamsters Canada represents about 125,000 workers in Canada and, with the International Brotherhood of Teamsters, about 1.4 million in North America. We are the transportation union.

Mr. Doug Finnson, the vice-president of Teamsters Canada Rail Conference Locomotive Engineers, chief spokesperson and lead negotiator, cannot be here today. He is very busy in Calgary, working hard to get the start-up of the rail ongoing, so you are stuck with me. I am Phil Benson, the lobbyist for Teamsters Canada.

The question is, who picked that date? Teamsters Canada or the Teamsters wanted to negotiate. We understood that there was a problem — a food fight, if you like — with the shareholders. We wanted to continue negotiating. We would still be negotiating today.

After literally a few hours of discussion — do not be misled about days or how much you talk — the company decided to file for conciliation and start the clock ticking. In between, negotiations were sparse and far between. We have filed bad faith bargaining with CP at Canada Industrial Relations Board. Throughout, Canadian Pacific's viewpoint was "let the government do it for them." Why was there a strike? Faced with a company that will not bargain, that bargains in bad faith, and that wants the government to do it for them, and faced with a 95 per cent strike vote with the Teamsters, chances are you will have a strike.

The Teamsters volunteered to have our members run the commuter trains. CP said no; it was too complicated. Thankfully, working with Minister Raitt and with ourselves, CP decided to have a goodwill gesture. However, make no bones about it, they were planning to shut down commuter rail in Vancouver and in the minister's own riding, ensnarling GO trains in Toronto and Vancouver. We had no fight with the government or with commuters. Our fight was with CP Rail.

Make no mistake about it, there was an elephant in the room. That elephant was the previous back-to-work legislation that was heavy-handed and favoured companies. That is why CPR wanted the government to do it.

The issues were two: pensions and fatigue. On pensions, we have a profitable company with $570 million in profit last year and I understand they had a bang-up first quarter. The pension plan was 100 per cent solvent a few years ago. Today it is 96 per cent solvent as of 2011. They had options. They took their options. We thank them for funding the plan. The problem, as with all pension plans, is long-term bonds with low interest.

However, in their message to shareholders, the company made it very clear: a 1 per cent increase in long bonds is worth $600 million. We all expect interest rates to go up. They have a short- to medium-term problem that they have created. They talk about a cap. We know of no locomotive engineers that have ever hit the cap. That is first.

Second, I know you are not in the world of collective bargaining, but I will ask you a question: Do you really think the Teamsters would have two people doing similar work at the bottom line and not getting the same pay? You are business people, most of you. You know when you look at a contract one might charge you more for photocopying or one will charge you more for telephone calls. All you care about is the bottom line. Therefore, let us talk about the bottom line.

The CP workers pay twice as much for their benefits, for their pension. They have given up work rules worth many thousands of dollars to be used to pay for their pension.

On the CN pension, they have indexing. They have other aspects of that plan that are extremely valuable. We have, if you like, two contracts where both units have decided to take a different tact on how they will take their salary, but a locomotive engineer at CN makes the same money as a locomotive engineer at CP.

With respect to fatigue, this is an amazing issue. In Calgary, they had a five-year study about using time scheduling. It was very successful. It helps in fatigue. Can we move it out? No. Oh, the temerity. Could we have two 48-hour periods off over 30 days, so for those two 48 hours someone can sleep in their own bed? No.

I was before a committee of the Senate just a few months ago on the safer railway bill. Fatigue science is a huge issue. I met, I believe, Senator Eaton and Senator Mercer and we talked about it. It passed this house by a voice vote. It went over to the other place. It passed there by voice vote unanimously. How often does that happen?

We have the will of Parliament saying we want fatigue science on the rail. Never mind us, they kind of snub their nose at you. We hope the Minister of Transport will start the fatigue science studies immediately so it comes into effect.

As for the negotiation process — I was listening previously — first, when you walk in and say "no" immediately, when you say "no, no, no" and "bad faith," it is pretty tough to get a deal.

What I will say about this bill, I will start by making this comment: I am union born, union bred; when I die, I am a union man dead. Back-to-work law is not part of my genetic structure. It is exactly the same as how a blue Tory, a blue Conservative, feels about tax increases.

This bill is fair. It is a fair bill. It gives us an option or a chance to perhaps get a good deal. I firmly believe if that elephant — the previous back-to-work laws — had not been in the room, we would not be here. I really believe we would have had a deal. The pick of the arbitrator is key, and I hope whoever is picked will be fair and be able to deal with the serious issues.

Mr. Finnson, our chief negotiator and vice-president, said that the minister has been professional and courteous throughout. The FRMS, Mr. Baron, who is the director, and the minister have worked hard to try to get us a collective agreement. I will tell you it takes two to tango and that dance card was never going to get filled.

On a personal note — and this is purely personal — the Conservative members' respect for the Teamsters and our membership was noted and appreciated. Thank you.

• (1600)

With that, Mr. Chair, I would be glad to answer your questions.

[*Translation*]

Senator Dagenais: I worked with the Quebec provincial police association, which is a kind of union, for 27 years. I was a representative, director, vice-president and even president. I had to negotiate several collective agreements, including a particularly memorable one in 1984, when the provincial government asked us to enter arbitration. There was no special legislation; we simply accepted arbitration. We halted all pressure tactics and agreed to arbitration. The arbitrator sided with us, but the government did not agree with the arbitrator's decision. That was when we discovered that we were the only workers in Canada who were not entitled to binding arbitration.

If I understand correctly, the special legislation will force you to sit down with an arbitrator whose decision will be binding.

For 30 years, we talked to lawyers and we would have appreciated having the option, when we could not agree, to enter into binding arbitration. We did not always have that option.

Given the failure of the negotiations, do you not think that it would be an excellent compromise to enter into binding arbitration? It could turn out in your favour or not, but I think it is an excellent opportunity and an acceptable compromise.

[*English*]

Mr. Benson: Thank you for the question. Our preference is always to negotiate a collective agreement directly with our employer. At the end of the day, this is the process the government will give us. It is as fair a process as we will see, and we can only determine what the outcome will be after the arbitration is held to see what the results are.

Senator Seth: Thank you Mr. Benson. You have given a lot of information and I appreciate it very much.

Canadian Pacific, as we know, is the lifeblood of many industries providing service to millions of sectors and companies. It is important for the government that CP Rail is functioning at full capacity for the Canadian economy.

Can you please outline some of the points touched on in negotiation that are keeping CP Rail executives from providing its service to Canadians? Please tell us: How much money does CP Rail want from Canadian taxpayers?

Mr. Benson: Thank you for that question. Unlike CP, we do not bargain in the press and we do not bargain in front of you. As to the issues of CP management, they had a food fight. I assume that those questions would be best directed at CP.

Senator Seth: Not you?

Mr. Benson: We represent the workers, and if I heard the question correctly, it was talking about management's running of the railway. I am not sure if I received the question correctly or understood it. Perhaps if you rephrase I would be able to answer.

Senator Seth: I just wonder what negotiations are going on that are keeping this backlog of not providing services to Canadians. What exactly is the situation that is not working out?

Mr. Benson: At this particular moment, with the shutdown of the railway, I expect there are no trains running. Mr. Finnson is very busy in Calgary working out the various protocols and agreements required to get the workers back to work as quickly as possible. Hopefully tomorrow the train service will start to run.

Senator Seth: It is really hurting the Canadian economy a lot by being busy.

Mr. Benson: I am sorry, if you are asking if the Canadian is economy hurting, I think if CP Rail had not had this notion the government would do it for them — and if they had bargained in good faith — we would not be here and the trains would be running, just like the commuter trains are running now.

Senator Ringuette: Welcome, Mr. Benson. This is the third time in the last 12 months that we have had to deal with emergency back-to-work legislation. We had Canada Post. We had the Air Canada one that restricted salary and provided pension cuts to employees. A few months later there were the subcontractors in Winnipeg and Montreal where the employees lost their jobs.

However, there was no emergency bill in this place from the Minister of Labour in order to provide certainty of employment and making sure that all these Canadian families have a decent income and can survive. That was not a concern.

Mr. Benson, my first question to you is this: In the last 25 years how many strikes — and for how long — were there at CP?

Mr. Benson: Going back 10 years, there was one strike for three weeks. That one was quite interesting because after Minister Blackburn at the time, a Conservative minister, intervened, it took us a grand total of two days to get a settlement. Again we were facing a company that did not want to bargain. However, once they actually walked into the room after three weeks, it was two days. As a shareholder I would be very upset because they could have had that deal without a strike.

Senator Ringuette: Absolutely.

If I recollect, this strike started on May 23.

Mr. Benson: I believe so. I am very tired. I have been working a lot. I am not sure what day it is today.

Senator Ringuette: It is May 31.

Mr. Benson: The end of the month already.

Senator Ringuette: Mr. Benson, as one of the negotiators in this collective agreement for these unionized workers, how did you feel on May 20 — three days before the employees went on strike — when the Minister of Labour went out publicly to say that she would bring in a return-to-work bill if the employees went on strike?

Mr. Benson: Thank you for the question. First, I am not a negotiator. I am not on the negotiating team. As I said, I am the lobbyist. I think it is not unexpected; it never helps when governments tip their hand.

I really welcomed the comments of the minister earlier. I thought the government is sending a message here, and it is a welcome one to not come back. I think what was more upsetting was that on the entire pension issue, clearly — and the comments in the paper — CP links the pension to its operating ratio, which sets its profit margin, basically stating they want to take money out of the pension to increase profit.

I will tell you what is even more upsetting. It is true that new managers go into the DC plan, but there are 2,200 managers in the current plan. Now, I told you that our members do not hit the cap, but they sure do, and guess what? They pay less money in and get more money out. We asked the question, "Are they going to take a cut, too?" Oh, heck no, they are going to get an increase. Quite bluntly, if the pension plan is in that much trouble and they are bleeding, the managers do not want to share the pain? We have to draw the line somewhere, do we not, senator?

• (1610)

Senator Ringuette: Yes, I imagine. Certainly, the rush to bring these three bills before Parliament, from my perspective, created an issue for the ability of labour to sit down and have an honest and sincere dialogue with employers when the employers have had three extremely clear signals from the current Minister of Labour that the government will definitely side with big business. There is no chance whatsoever in the process to have both parties engage in constructive dialogue without interference from the federal government. It is strong and clear. Maybe this is not a question, but I certainly feel that the correct negotiation pattern and the right to negotiate honestly for the good of the country on a long-term basis have been waived by this government.

Mr. Benson: Thank you. The two elephants in the room — the previous back-to-work legislation — tainted this round of bargaining. It will taint the final result. If there is a glimmer of hope, reading into the minister's comments earlier, which I appreciated, the government is sending a message to the private sector, "Do not come here." We have another round of negotiations starting with CP soon, with many companies across the country. If the government is going to respond when something happens, then governments will do what governments do. If this is what companies have to look forward to, I doubt they will do it. To be quite blunt about it, I do not think CPR would have taken an 8- or 10-day strike for this. This would have been done without a strike. On the last day with Mr. Baron, our bargaining table wanted to continue to talk. They opened the door to have a net-ARB deal. It took the company one second: No. It is true that an hour later Mr. Finnson did come back and say, "We said no, too." As we said, it takes two to tango, and that dance card was not going to be filled.

Senator Ringuette: Three days before the process even started, the minister had made a public statement, and the result is what we are looking at today.

Mr. Benson: I will be clear about that. At that point, we were well done bargaining and were in the room. To cut a deal in the last three days is a pretty tough thing. I think it would be better for the government not to telegraph it if they are planning to do it — just do it and not telegraph it.

Senator Segal: I want to ask our guest two brief questions. The first one is related to the fatigue issue with respect to your members as operators of CP units across the country, and the health and safety issues that emerge therefrom. Can you give the chamber your perspective on what, if those issues are not addressed to your satisfaction, the risk factor is with respect to derailments and other difficulties, plus your members in terms of their health and well-being, which has to be one of your primary concerns?

Second, you talk about the elephant in the room. As everyone knows, there was a bit of a corporate upheaval on the part of the other participant in the bargaining. Part of what led to that, I expect, was a desire on the part of institutional investors to have a board that would get higher margins out of the company, a more constructive cash flow and higher profits. The Teamsters is one of the most sophisticated labour organizations in the world. I am sure you have given some thought to what that means strategically, and you faced it in other companies with whom you have negotiated. Can you share with us what that might mean relative to the circumstance we now face?

Let me express my thanks for the suggestion that the Teamsters made to keep the commuter services operating across the country. That is the sort of thing that speaks constructively to how people who are in dispute understand that they are also citizens and have obligations to fellow citizens. Thank you for that.

Mr. Benson: I really appreciate that. To make it very clear, that is my message to my brothers and sisters out there who had to volunteer to cross a picket line to ensure that their fellow citizens got to and from work. To cross a picket line as a trade unionist is something else. You have to be a trade unionist to understand; and my great thanks to them. I am very proud of them.

On the fatigue issue, I have been kind of the fatigue guy for the Teamsters. We have dealt with the trucking industry and signs of fatigue. I just finished a one-off for pilot fatigue in the air. The rail industry has a management plan for fatigue. When they were asked about it, they said it was in the filing cabinet. They said, "Well, we have one; you did not say we have to implement it." As you know, the Transport Committee here and in the other place clearly have heard in their hearings that it is absolutely abysmal. It does not meet any terms. In this particular contract, they were looking for remedial action. The long-term health and safety consequences on human beings — it is known that people who work these hours live longer and cost health care more money. The company is transferring to the taxpayers their desire to work people to death.

We know what fatigue does for accidents. In fact, I remember working with the negotiating team at CN. They were looking for fatigue issues. At the same time they were saying no to us, their chairman was admitting in front of the shareholders that about 70 per cent of accidents they had were related to fatigue. I will say that Mr. Hunter Harrison did sign off on fatigue issues on that contract.

As to the corporate upheaval, that is why we did not want to start the clock ticking. We understood that there was a corporate upheaval. I will say it again, "Who set that date?" We were shocked that the company set it basically within days of their corporate hearing. They must know that if Mr. Greene was sent out — What are they doing? Who is their CEO? Who is their management team?

As to the higher margins issue, we understand that. To be blunt about it, I have been told by guys, and even they complain about how management runs the company. Do you manage a company the way it is supposed to be run so that you earn your money by managing the company, or do you increase cash flow by stealing money from your pension? To me, you manage a company. I met Mr. Mongeau, the CEO, a short while ago. I saw him talking about how we were a railroad family and how his pension was protected. The caps and price may be different. CP made a choice about how they would fund it; and, God bless them, they probably made the wrong choice.

When you manage a company, you should manage it to make money from your operations, not by taking money from something that the workers have paid for out of their wages for 30 years at twice the rate of CN workers plus giving money back in operating rules so they could have even more money for their pension. After a couple of years of low interest rates — and in their shareholders agreement the interest goes up one or two points over the next couple of years — they will be awash with cash. I will tell you one of the ironies: Two of the largest shareholders are the Canada Pension Plan and the teachers' pension fund. Talk about robbing Peter to pay Paul. What can I say? I thank you for the questions. They are very important and I am glad you asked them.

• (1620)

Senator Cowan: I want to make sure I understand what you are telling us today. I believe a fair summary would be that you think the government, by telegraphing in advance to the union, and particularly to the company, that it was prepared to intervene, that that was the elephant in the room and that it was inappropriate. Therefore, you are critical of the government's pattern of involvement in perhaps prematurely bringing in back-to-work legislation. Without that, you might have been able to achieve an agreement through the ordinary processes of collective bargaining.

However, we are where we are, and we have a bill which you believe and we believe is better than the previous back-to-work bills brought in by the government. Are you saying to us today that you would like us to pass this bill? Are you supporting this bill today?

Mr. Benson: There is the simple fact that back-to-work legislation was created for railways. Make no bones about that.

Senator Cowan: I am sorry, I missed your answer.

Mr. Benson: I said that back-to-work legislation was created for railways. That is where they started.

Senator Cowan: The question, sir —

Mr. Benson: I will get to your answer.

The elephant in the room was the two previous heavy-handed, pro-company bills that I think gave CP a message that they could get it, too. That was the elephant in the room. I do not think any railway worker will not expect that sooner or later there is almost a definite chance they will be legislated back to work. We will always oppose it; we do not support it; it does not fit to our genetic structure.

Senator Cowan: Is your union opposed to this legislation? Is it asking us to vote against this legislation?

Mr. Benson: We would hope that you would. I am saying to you that I hope you would. I think the bill will pass, but, as a labour organization, we do not support back-to-work legislation.

Senator Cowan: So you are opposed to this legislation, even though it is less draconian than the previous legislation.

Mr. Benson: We are opposed in principle to back-to-work legislation. If the government is going to bring back-to-work legislation, Minister Raitt has brought forward fair legislation.

Senator Lang: Mr. Chairman, Senator Cowan presented one of the questions I was going to put to the witness. It leaves a couple of options in the house from the point of view of the bill itself.

However, I want to go back to the witness's observations about the financial viability of the company and looking ahead in the long term. This is on behalf of the employees you represent, as well as the general public and the economy. They talk about the viability of the company. You have prefaced your remarks a number of times by saying that if the interest rates go up, then they will be awash with cash. If they do not go up and we assume the status quo is maintained, then what is the viability of the company in the long term?

With the consequence of this legislation, do you feel that you can come to a satisfactory agreement with the company, a long-term agreement that keeps the company viable and your employees well paid?

Mr. Benson: Thank you for the questions. On the first one, I do not have any private or insider information. I can only rely upon the SEC filings in the United States and the annual reports to shareholders. I have read them carefully, upside down and sideways, and, unless I am missing something, I have not seen any notice in there that says, "Caution to shareholders, we might be going belly up." In fact, Mr. Greene, through his tour around Canada trying to keep his job, put out press release after press release talking about how wonderfully he was doing.

What is done in collective bargaining, what I see in collective bargaining and what I would have to rely upon in the real world is all that I know. Yes, they have a problem. As I said, it was 100 per cent. All I can rely upon is the report they gave to their pensioners, the annual report to the people who earned a pension in 2011, and it stated it was 96 per cent solvent. I cannot come here and say that I have all this other information. I do not know. The Teamsters Union is a mature union. We will look at their problems and their issues and try to deal with them.

From my viewpoint, the big problem is that the previous legislation, because it was an elephant in the room, tainted the round of bargaining. We will have a fair process out of it, but it will still taint the process. Really, that is all I can say about it.

I sincerely hope that there will be a good deal. CP Rail has been around since Canada has been around. I fully expect it to be around long after I am dead.

Senator Lang: You talked about the negotiations being tainted, yet a little earlier you stated that the back-to-work legislation that has been before this house has always been there primarily for the railroads. You know that when you go on strike, eventually you will have to be legislated back to work; is that correct? Is that what you said?

Mr. Benson: It is what has happened. However, in the CP Rail, Teamsters Canada Rail Conference — Maintenance of Way, that did not happen. There was a three-week strike. The minister intervened to get us back to the table. There was no back-to-work legislation. It is the timing of the legislation.

I say the process is tainted, senator, because whenever you have fear that a government may impose back-to-work legislation on Air Canada or the postal workers, it taints what happens in the room. Now, with this legislation going forward, I think the government, hopefully, from the minister, is sending a signal out to both business and unions, "Go negotiate and if you come here you might get treated fairly, but please do it." This legislation will not resolve what was in the room from the previous two.

Is that satisfactory? In other words, if you negotiate with a gun at your head you negotiate differently than you would if you do not have it and, negotiating with the thought you have a gun at your head, you will negotiate in a different way than you would without that gun being there. The previous legislation in fact tilted the negotiations in the room — what little there was. Trust me.

Senator Lang: May I follow up in respect of this?

The Chair: Senator Lang, I have two more senators and we have only eight minutes to go. Very briefly please.

Senator Lang: In order to get back to the negotiating table, in view of the events, would you not agree this legislation is necessary to be passed in order to move on?

Mr. Benson: As I said before, on principle as a trade unionist, I always oppose back-to-work legislation. Governments do what governments must do and, at the end of the day, the Senate will decide what it must do.

The Chair: Thank you, Senator Lang. I have Senator Poy, then Senator Duffy, and about seven minutes to go.

Senator Poy: One of my questions has already been asked by Senator Cowan. I have another question on the pension fund. From what I have heard, it seems that the pension fund had either been incorrectly managed or mismanaged. They used to have a surplus a few years ago and, because of the fall in interest rates, now it is in deficit; is that correct?

Mr. Benson: Thank you for the question. I would not say it was mismanaged or improperly dealt with. That is not the case. They made choices to deal with the funding and they have the result they have. Every company we have that has a pension plan has a problem because of the low interest rates. The policy to have a low interest rate has an unintended consequence of seriously damaging pensions. CP is not unique. It will affect every company.

I will say that CN seems to be managing its pension funds better, as are many of the other contractors and companies we deal with, because they perhaps chose to deal with it in a different way. Is it mismanaged? No.

Senator Poy: You mentioned that we know, because of the majority on the other side, this bill will pass no matter how the Liberal side votes. However, that will not solve the financial management of the company, right? Interest rates are still low, so even though everyone will be told to go back to work with the legislation, what will change?

• (1630)

Mr. Benson: I think what will change is that we might have a fair shot at getting a fair agreement. As for managing a company, it is not our job, though we will try our best to make constructive suggestions. At the end of the day, it is the manager's job to manage, and if managers do not manage well, then they lose their jobs just like we lose our jobs if we do not work correctly.

Senator Poy: I understand that, yes. However, do you think there needs to be a change in the management?

Mr. Benson: We do not welcome managers getting involved in union politics, and we do not get involved in management politics.

Senator Poy: Thank you.

Senator Duffy: I want to thank the witness for coming today and providing his insights. Mr. Benson, you are well known. You are a sophisticated, professional lobbyist in this town, and you have lots of contacts in the media. Our colleagues on the other side are anxious to use you to try to bludgeon the government.

Could you explain to us why your spinners were telling the parliamentary press gallery that you desperately need this legislation to avoid a catastrophe at CP Rail in terms of your labour relations and that this is the best thing that the Teamsters could hope for?

Mr. Benson: Thank you, Senator Duffy. I think that we go back at least 20 or 25 years, and I have always welcomed our chats both here and in your other world. I enjoy both, by the way.

As to our spinners, I work hand in hand with our communications director, Mr. Lacroix. I do not remember him actually making any comments like that in the press. What I will say is that this bill was, of all outcomes, much better than we thought. It was fair. It does not take away our dislike, as I said, from a genetic structure, on the back-to-work side of the legislation. We will agree to disagree to agree to disagree.

Senator Duffy: Thank you.

Senator Finley: Thank you. My question is fairly short and may give rise to a shorter supplementary question.

In the May 5, 2012, vote, the union membership voted, as I understand it, 95 per cent in favour of strike action. What was the turnout?

Mr. Benson: I do not have that information, but I could probably get it for you.

Senator Finley: Do unions generally indicate turnout, or do they generally only give the percentage of the vote? Are these numbers freely and readily available?

Mr. Benson: They would be available to the bargaining unit. Whether the union decides to give out both or not is a matter of practice. It is the same as in a ratification vote; sometimes they are given out and sometimes not. There is not much to be read into it.

Senator Finley: This 95 per cent who voted in favour may have been from only a 20 per cent turnout or from a 95 or 100 per cent turnout?

Mr. Benson: If you are a trade union, and the people wish to go on strike, you would not be doing it if the numbers who wished it were not extremely large.

Senator Finley: That is great in theory, but I would like to see the numbers. After all, labour unions have a certain status in Canada. I think there is a responsibility towards the taxpayer to give them the whole story. Certainly in other forms of elections — municipal, provincial and federal — we are obliged to tell the public what the turnout is to see the interest level.

I would be interested in hearing from you what the turnout, in actual fact, was.

Mr. Benson: Thank you.

The Chair: Honourable senators, we have reached the point in the panel where, on behalf of all honourable senators, I would like to say to Mr. Benson thank you very much for appearing before us in the Committee of the Whole this afternoon and thank you for joining us to assist us in our work on this bill.

Mr. Benson: Thank you for your kindness and courtesy. It is always a pleasure to come before you.

[*Translation*]

Senator Carignan: Honourable senators, I would now like to invite the final group of witnesses, Professor George Smith from Queen's University and Professor Ian Lee from Carleton University.

[*English*]

The Chair: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chair: Honourable senators, we now have before us two professors, George Smith, Adjunct Professor and Fellow from Queen's University; and Ian Lee, Assistant Professor, Strategic Management and International Business, Sprott School of Business, Carleton University. On behalf of honourable senators, I wish to extend to both of you a cordial welcome to our Committee of the Whole and our study of Bill C-39. I invite you to make your opening remarks, following which honourable senators may have some questions that they wish to pose to you.

I know that this is not new to Mr. Lee because he appeared before the Senate Banking Committee as recently as yesterday. Welcome again, Mr. Lee. I do not know which of you will be going first, but you may make that decision between yourselves.

George Smith, Adjunct Professor and Fellow, Queen's University, as an individual: It will be me, the rookie.

My name is George Smith. As you know, I am a Fellow at the School of Policy Studies at Queen's University and Adjunct Professor in the School of Business and the School of Industrial Relations. Thank you for the invitation here, honourable senators. I appreciate the opportunity to add to the public discourse around this situation and the circumstances that you are addressing today.

I want to briefly give you some background, talk about the historical context and the current context and suggest some implications for what we are looking at, but I will be brief.

• (1640)

I can safely say that I have studied, taught and practised industrial relations for virtually my entire adult life. In spite of its flaws, I am a strong proponent of free collective bargaining, which includes the right to strike or lockout as a dispute resolution mechanism.

I have seen the good, the bad and the ugly and, as you have sensed from today's conversations with the union and management, it is a tough business. Collective bargaining is tough, but it works, if it is allowed to. It can be messy, it can be inconvenient, and it can be costly, but one way that I would put it is that it is the worst form of dispute resolution except when you consider the alternatives.

In terms of historical context, I have grown-up and practised in a world of industrial relations where the labour codes, both federal and provincial, allowed the right to strike or lockout to employees, unions and companies. The government role has historically been through the mediation conciliation process. In game terms, they are the "referee" of the game.

There has historically been virtually no government intervention in provincial jurisdictions. Intervention in the federal jurisdiction, while it is more common, has been relatively rare, and it is only in cases where there has been demonstrated significant economic harm.

I do believe in the right and the power of the government to intervene, but it is the timing and the form of that intervention that I believe needs debate. If I look at the system that I have grown-up with, it is a system that has short-term pain and long-term gain. What I am concerned about is that, in the last year, we have seen a situation where we may be having short-term gain and long-term pain.

Since virtually one year ago, there has been intervention in every single dispute at the federal level. It has been pre-emptive intervention, which is unprecedented, and it has compromised the collective bargaining process, as you heard from the Teamster representative recently.

The interest arbitration processes that were given to Canada Post and Air Canada have not resulted in any agreements or finality, and I believe that there is not only long-term harm to the economy as a result of that, but also long-term harm to the relationships that are involved in those complex and large workplaces. In fact, the government has become a player in the negotiations, rather than the referee, and unfortunately appears to be making up the rules while the game is in progress.

There are some significant long-term implications to this, in my mind. Again, I am here to encourage what I believe is the necessary public policy debate. If the government is going to continue to intervene, there has to be a debate as to when and how and the necessary change to the legislation which currently allows for strikes and lockouts. We must define the public interest.

In the case of Air Canada and the intervention, there has never been a historical intervention in the airline industry or in that company by the government, and we now have them intervening in four disputes in the last year. If the right to strike and lockout is going to be removed, then the inefficiency of interest arbitration must be addressed or federal industries will become uncompetitive and labour relations relationships will be harmed irreparably.

In the late 1990s, there was a commission regarding public policy as it related to industrial relations. It was chaired by Andrew Sims, and the product of that was a report entitled "Seeking a Balance," which I have here and to which I want to refer. This was a tri-party group, chaired by an eminent labour lawyer. It involved representatives from trade unions in the federal sector, as well as the majority of employers in the federal sector, as well as representatives from government.

In chapter 10 of that report, when they are dealing with the issues of back-to-work legislation and alternatives to collective bargaining, the report stated "In our view, neither conventional arbitration nor FOS," final offer selection, "offers an attractive substitute for free collective bargaining." Free collective bargaining remains the best solution in the long run in a free enterprise economy where parties need to negotiate changes.

To summarize, I am raising a concern not that the government does not have the right to intervene if and when necessary, but that we have a situation now where that has not been clearly defined. It certainly would appear to be in contravention of the Labour Code as it currently exists. I believe there needs to be much more public policy debate before we buy into the notion that strikes and lockouts are no longer to be allowed in the federal labour jurisdiction.

Ian Lee, Assistant Professor, Strategic Management and International Business, Sprott School of Business, Carleton University, as an individual: Good afternoon, honourable senators. It is an honour and a pleasure to be in this august building, I assure you. I have lived in Ottawa all my life, and it is still a thrill to visit Parliament Hill and this magnificent institution.

I am very pleased to be here to discuss Bill C-39, as my interest in this is longstanding. Unlike Professor Smith, I am not a labour relations scholar; I am a policy analyst. I completed my 850-page thesis on the origins, growth and decline of Canada Post from 1765 to 1981. I read all the Hansard debates of the Province of Upper and Lower Canada, the Province of Canada, and then Canada from 1867 to 1981 on the post office only.

I am telling you this because it became very clear that throughout our entire history, transportation and communications have been central to the parliamentarians of our country, from the very beginning. Indeed, the construction of the CPR followed the first great act of nation-building, which I argued in my thesis was the establishment of the Canadian post office in colonial Canada. Restated, active parliamentary involvement in transportation and communications is part of our Canadian history and heritage.

Last year, when the government passed back-to-work legislation for workers of Canada Post and Air Canada, many pundits said it was unprecedented, as I believe Professor Smith just said. I knew, from my days working down the street in the Bank of Montreal at 144 Wellington, which is now part of the parliamentary precinct, that this was untrue. I knew that postal workers had been legislated back to work in the 1970s and 1980s. Then it became imperative for me to empirically research and identify every back-to-work bill passed by every Canadian Parliament in modern times to separate historical, empirical reality from ungrounded, untethered punditry. I did. The results were published in my article in March of this year by the *Journal of Parliamentary and Political Law*, which I believe is published on the Hill. The article was called "Striking Out: The New Normal in Canadian Labour Relations?"

The data were illuminating. The research revealed that 35 times, from 1950 until 2011, the Parliament of Canada has legislated striking workers back to work — 35 times. Let us give the score: St. Laurent, 1; Diefenbaker 2; Pearson 3; Trudeau 11; Mulroney 9; Chrétien, 5; Harper, 5. That is the score of back-to-work bills legislated.

Let us turn those scores into a hockey game score, the Liberal team versus the Conservative team: Liberal governments have legislated back-to-work striking workers, 20 times; Conservative governments, 15 times.

This evidence empirically repudiates the claim that the government's approach to back-to-work legislation is unprecedented. In fact, the bills passed by the current government represent the thirty-second, thirty-third, thirty-fourth and thirty-fifth times that back-to-work laws have been passed by Parliament since 1950.

However, an examination of the striking workers, firms, industries and sectors legislated back to work is even more revealing. Of the 35 work stoppages legislated back to work by the Canadian Parliament, 32 were employed in the following industries: ports, 11; railroads, 10; post office 5, grain handlers, 4; airlines and airports, 2, while the three anomalies or outliers were Government of Canada workers legislated back to work by the Parliament of Canada.

• (1650)

What do these 32 work stoppages from 1950 to 2011 have in common? Each striking union represented workers and industries that are part of the transportation and communications sector. This is extraordinarily revealing. Canadian economists, historians and policy scholars, from the late Harold Innis at the University of Toronto, to Marshall McLuhan, to popularizers such as Pierre Berton, have long understood the absolute centrality of transportation and communications for the relatively small numbers of Canadians spread east to west across 9,300 kilometres, and 4,600 kilometres north to south, in the vast, far-flung, inhospitable and often unyielding land of Canada.

Prime Minister Mackenzie King once said that Europe had too much history and not enough geography. The inverse is equally true for Canada. We have too much geography and possibly not enough history.

This research reveals what contemporary pundits and some labour relations scholars have perhaps failed to understand but that past parliamentarians do understand, that Canada

straddles one quarter of the land mass of the northern hemisphere of the planet Earth and that individual Canadians, firms, governments, universities, non-profits, students, elders — in fact, all Canadians — are utterly dependent on transportation and communications in this incomprehensively vast land.

Labour strikes in transportation and communications impose what we now know, courtesy of the opposition leader in the House of Commons who brought it to the discourse, are called "externalities" imposed by a tiny number of people — 5,000, 10,000, 15,000 on strike — on 34 million Canadians, which is grotesquely unfair, as they are not parties to the strike.

Looking back on 60 years, it is now clear that every Parliament, every government and many parliamentarians, under the leadership of St. Laurent, Diefenbaker, Pearson, Trudeau, Mulroney, Chrétien and now Harper, understood deeply what critics do not understand.

Moreover, Canada has an abysmal record, the worst in the OECD, with the highest number of days lost due to strikes, and this is disproportionately in the transportation and communications sectors.

Thus, those MPs, pundits and scholars who argued that back-to-work legislation is an assault on labour relations fail to understand that back-to-work legislation has a long parliamentary history, supported by every government since 1950, but it affects only workers and unions in transportation and communications due to the existential importance of these two sectors to the lives of all Canadians.

In summary, the issue, stated as clearly as possible, which must be addressed by the legislators, the ultimate policy-makers in our country, is whether the greater public good of 34 million Canadians will prevail over the self-interest of a few thousand disgruntled Canadians.

The Chair: Thank you both for that presentation. Honourable Senator Seth will now pose questions.

Senator Seth: Thank you very much, professor. That was a very appealing introduction.

Professor Smith, you are an expert in industrial relations and human resources management. You were Vice-President of Industrial Relations with the CP Rail system and Senior Director of Employee Relations at Air Canada, before and after its privatization, which gives you a lot of experience dealing with delicate employment negotiations.

Please tell us how, in your opinion, Bill C-39 will be the best option to resolve the current situation and to stop the continued negative effect to the economy.

Mr. Smith: Thank you for that question. The difficulty we find ourselves in now is that, in a certain sense, the cat is out of the bag. As the Teamsters representative correctly stated, the moment there is a signal that the government is going to intervene in collective bargaining, the attention to getting a deal and the attention to the collective bargaining shifts to what the back-to-work legislation will be and what form the arbitration or dispute resolution will take.

I think the inevitability of the passage of this bill is a foregone conclusion. Having said that, were I able to speak to Minister Raitt or other representatives of the government, I would simply suggest that letting the process work, letting free collective bargaining work, letting a strike happen for a period of time, with the requisite showdown that is part of that, is a necessary part of the process.

I do not disagree with Professor Lee at all about the fact that Parliament has historically intervened; it is a question of when and how. The unprecedented nature of this current situation is that there has been pre-emptive intervention without the necessary change in law. If that is the system and the policy we are going to have, then great; change the legislation. However, we have not had that public debate, and pre-emptive intervention compromises free collective bargaining.

Senator Seth: I think we should still pay attention to the Canadian economy, which is of primary importance, and also to the convenience of the public. The damage is happening, and we have to stop that.

Mr. Smith: The one small problem with that is that we do not know. There is a cost to this strike, and there is probably good reason for government intervention. The problem is that because the dispute resolution process is now going to be interest arbitration, which is an inefficient market tool, we do not know what the settlement was going to be. We do not know the cost to the company. We do not know the long-term competitive cost to CP and perhaps to the rail industry through extension of those agreements, whereas with free collective bargaining, in spite of the fact that it might take a strike or a lockout, there is finality. It is an efficient market tool, despite the short-term costs.

Senator Seth: Yes, but I think that the strike should be over. We can still continue our negotiations and not hurt the economy.

The Chair: Professor Lee, do you want to add anything to that?

Mr. Lee: Yes, I do. I have great respect for Professor Smith, but I simply reject his fundamental assumption or postulate. We have in our country certain classifications and occupations that are not allowed to strike. Doctors and emergency personnel cannot strike, and we just take that for granted. We know that is true. We know that is to be the case. I think that transportation and communications should be treated just like emergency services personnel. We are so dependent on it.

Senator Seth: Thank you.

Mr. Smith: Simply put, that is not the law.

Senator Finley: My question is perhaps a little esoteric in the current context. They usually are.

Are either of you eminent students of industrial relations and industrial relations history aware of any academic or special-interest reports that probe the question of how many people who are currently unionized would not choose to do so if they had a choice, in other words, not a closed shop? If not, do either of you gentlemen have any comment on the fact that Canada, federally, is not a right-to-work country and on what impacts that may be having on the economy?

Mr. Lee: First, I am a numbers guy. I like to look at statistics and that sort of thing of real people and organizations.

Unionization has been declining in Canada for 50 years in the private sector. It is down to 16 per cent. The parallel trend has been that unionization has been skyrocketing in the broader public sector, including universities, colleges, schools and governments. Increasingly, unionization is becoming a public sector phenomenon. It is down to 16 per cent in Canada and 7 per cent in the United States. At the rate it is going, in another 10, 15 or 20 years, unions will vanish or become almost invisible. The market is speaking. People are choosing not to join unions, through market forces in the private sector. That would be my response to your point.

• (1700)

Senator Finley: Would the other gentleman respond?

Mr. Smith: I think your question was around research. I am aware of no such research. There are laws, as many of you know, in the United States, where I think 22 states have right-to-work laws that allow employees, even in a unionized environment, not to join a union. Our democracy has not chosen that particular approach to trade unionization and labour relations, and our law is very clear in that regard. Once you are in a union, unless you decertify, you are bound by that relationship.

Senator Finley: Do you think there would be any merit in looking at right-to-work legislation from a federal level in Canada?

Mr. Lee: You have asked a very good and very controversial question. I will answer it indirectly.

I have done much research on which provinces and states are doing well and which are not. In the northeastern United States, the so-called Rust Belt states of Michigan, Ohio and Pennsylvania are doing very poorly, and they have high levels of unionization. There are actual empirical studies on this. I am not just randomly quoting statistics.

In the southern United States, and I am referring to Tennessee, Georgia and North and South Carolina, auto plants — North American, European and Japanese — have been locating there, and they are booming. They are generating all kinds of economic growth, so there have been papers showing that there is a correlation in those traditionally heavily unionized states. I am including Ontario in that, where they are doing much less well in the current competitive sweepstakes of the modern economy than those states that have much lower levels of unionization, in part, because they have right-to-work laws.

The Chair: That concludes the list of senators who wish to pose questions to these two witnesses. If there are no others, it behooves me, on behalf of honourable senators, to say thank you to Professor Smith and Professor Lee for coming here today and for joining us to assist us in our work on this bill. Thank you both very much.

Honourable senators, that concludes the witnesses that we were authorized to hear on the four panels this afternoon.

Honourable senators, is it agreed that we move to clause-by-clause consideration of Bill C-39, An Act to provide for the continuation and resumption of rail service operations?

Hon. Senators: Agreed.

The Chair: Carried.

Shall the title stand postponed?

Hon. Senators: Agreed.

The Chair: Carried.

Shall clause 1, the short title, stand postponed?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 2 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 3 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 4 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 5 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 6 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 7 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 8 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 9 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 10 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 11 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 12 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 13 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 14 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 15 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 16 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 17 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 18 carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall clause 1, the short title, carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall the title carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

Shall the bill carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall I report the bill without amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Carried, on division.

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

REPORT OF COMMITTEE OF THE WHOLE

Hon. Donald H. Oliver: Honourable senators, the Committee of the Whole to which was referred Bill C-39, An Act to provide for the continuation and resumption of rail service operations, has examined the said bill and directed me to report the same to the Senate without amendment, on division.

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

Some Hon. Senators: Now.

THIRD READING

Hon. Pamela Wallin: With leave of the Senate and notwithstanding rule 58(1)(b), I move that the bill be read the third time now.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: It is moved by the Honourable Senator Wallin, seconded by the Honourable Senator Raine, that this bill be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Hon. James S. Cowan (Leader of the Opposition): Your Honour, I believe Senator Wallin had a few words to say, and then I had intended to say a few words.

The Hon. the Speaker: There is debate on third reading. Thank you, honourable senators.

Senator Wallin: Honourable senators, I have a very few words.

What we have heard today was truly worth listening to. We heard that the company wants this bill and that the union agrees it is the best way to get to the table. The experts believe we are within our rights and that the precedent of legislating when the greater public interest was in need was well established and established by the party opposite.

At a cost of $75 million a day, with millions of jobs at risk, it is both just and necessary. Senator Cowan said yesterday that he would wait to hear these views before declaring he would vote against the bill. I wish he had because we have heard some very interesting things, but this kind of useful and insightful exchange has helped us decide how to do the right thing.

Senator Cowan: Honourable senators, today the Senate did what it is set up to do. We all should be proud of what went on today and to contrast that with what went on in the House of Commons. There was no opportunity in the House of Commons for parties to be heard. Here, we heard from the minister and her officials; we heard from the employer, Canadian Pacific; we heard from the Teamsters Union; and, in a departure from our usual practice, at least since I have been here, we brought in a couple of experts in the field of labour relations. They spoke to us about this particular piece of legislation and their different views about the impact that it would have on labour relations in this country. I think we can take some credit and should take some pride in our efforts today.

There has been a good deal said about delay and unnecessary delay. I would point out to honourable senators that this bill spent two days in the House of Commons and no one was given an opportunity to be heard. There were many speeches by members of the House of Commons, but no opportunity to hear what we heard today.

I agree with Senator Wallin, although I perhaps did not hear exactly what she heard from the witnesses. I think that we all gained a great deal from having heard what they had to say and having had an opportunity to ask questions.

This bill was before us. Honourable senators remember it arrived here yesterday afternoon, and we have dealt with it in 28 hours. There is no reason the Senate should feel that it should accept any criticism for having unduly delayed these proceedings. As I say, we did what we were supposed to do and did what we are here to do, and I think we did it well.

• (1710)

As I said in my speech earlier today, this bill is much improved from the previous attempts at back-to-work legislation brought in by this government. I referenced two particular instances, which are two lessons that the government has learned. As our friend from the Teamsters Union said, as far as back-to-work legislation goes, this is about as good as it gets — although his DNA does not permit him to support back-to-work legislation in any form, and I guess we have to understand that.

Our problem, on this side, is not with the substance of this bill; our problem is with the government and the way the government has once again precipitously and prematurely intervened in a dispute between a private company and its employees. Honourable senators, it is a pattern — not a single instance but a pattern — as was pointed out in the column by Mr. Ivison to which I referred earlier. It is this pattern of unnecessary and premature interference that has tainted the process of collective bargaining, as I think the witnesses agreed — or at least the Teamsters official and at least one of the professors agreed. As people have said, it is this telegraphing of the government's intention in advance of there being any real economic damage. That is the elephant in the room, and that is what has tainted the process.

The government indicated in advance, quietly and off the record in some cases, its intention to intervene and bring in back-to-work legislation. The Teamsters official said it was better legislation than we might have anticipated. However, as Professor Smith said, once that signal was given, the cat was out of the bag. It was that pre-emptive intervention that compromised free collective bargaining.

For those reasons and not because of the particular provisions of this bill — but because it is a further example of an unfortunate pattern that this government is following — we on this side will not support this legislation.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: All those in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the yeas have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. Do we have advice from the whips?

Senator Marshall: Let it be a 30-minute bell.

The Hon. the Speaker: The vote will take place at 5:35 p.m.

POINT OF ORDER—SPEAKER'S RULING RESERVED

Hon. Pierrette Ringuette: Honourable senators, I rise on a point of order. I would like to bring to the attention of honourable senators and Your Honour that for the second time in the last four months, the Senate proceeded to Committee of the Whole at the same time that the Standing Senate Committee on National Finance was holding hearings. Although the Finance Committee had the authority to meet, even though the Senate was sitting, the Finance Committee did not have the authority to meet while the Senate was in Committee of the Whole.

This is the second time in just a few months that this has happened. As a responsible senator, I think that my privilege has been tampered with and I would like to see this particular situation addressed. If it cannot be addressed by Your Honour, then please refer it to the Standing Committee on Rules, Procedures and the Rights of Parliament so that it can be ruled upon and properly addressed so that my privilege will not be tampered with in future deliberations.

The Hon. the Speaker: I thank the honourable senator for raising that matter. I will undertake to look into it and report to the chamber.

Honourable senators, there is agreement for a 30-minute bell. The vote will take place at 5:40 p.m.

Do I have permission to leave the chair?

Hon. Senators: Agreed.

• (1740)

Motion agreed to on the following division, and bill read third time and passed:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	Meredith
Boisvenu	Mockler
Buth	Nancy Ruth
Carignan	Nolin
Comeau	Ogilvie
Dagenais	Oliver
Di Nino	Patterson
Doyle	Poirier
Duffy	Raine
Eaton	Rivard
Finley	Runciman
Fortin-Duplessis	Segal
Frum	Seidman
Gerstein	Seth
Greene	Stewart Olsen
Housakos	Stratton
Johnson	Tkachuk
Lang	Unger
LeBreton	Verner
MacDonald	Wallace
Maltais	Wallin
Manning	White—47
Marshall	

NAYS
THE HONOURABLE SENATORS

Callbeck	Mahovlich
Campbell	Mitchell
Chaput	Moore
Cordy	Munson
Cowan	Poy
Dallaire	Ringuette
Day	Rivest
De Bané	Robichaud
Eggleton	Sibbeston
Fraser	Smith (*Cobourg*)
Furey	Tardif
Harb	Watt
Hervieux-Payette	Zimmer—27
Hubley	

ABSTENTIONS
THE HONOURABLE SENATORS

Cools—1

FOOD AND DRUGS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-313, An Act to amend the Food and Drugs Act (non-corrective contact lenses).

(Bill read first time.)

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

(On motion of Senator Carignan, bill placed on the Orders of the Day for second reading two days hence.)

• (1750)

CRIMINAL CODE
CANADA EVIDENCE ACT
SECURITY OF INFORMATION ACT

BILL TO AMEND—THIRD READING

Hon. Linda Frum moved third reading of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act, as amended.

She said: Honourable senators, I speak to you today regarding Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act.

As a member of the Special Senate Committee on Anti-terrorism and as a sponsor of this bill, I would like to begin by thanking all of the witnesses for their thoughtful insight, and I would like to commend all honourable members of the committee for their thorough and investigative questions.

As noted at the first and second readings, this bill proposes to re-enact the provisions found in former Bill C-17 and focuses on the investigative hearing and the recognizance with conditions provisions that sunsetted in 2007. It also responds to recommendations of the parliamentary review of the Anti-terrorism Act, which took place between 2004 and 2007 and includes additional improvements to the Criminal Code, the Canada Evidence Act and the Security of Information Act.

Terrorism will unfortunately continue to be a threat for the foreseeable future. The government needs to provide law enforcement with the means to anticipate and respond effectively to terrorism. Bill S-7 is a strong step in this direction. It contains tools which we hope will never have to be used, but which will be on hand if necessary to adequately defend our nation's security.

There are five main tenets of Bill S-7.

First, the investigative hearing provision would allow the courts, on application from a peace officer, to compel someone with information about a past or future terrorism offence to appear for questioning. These hearings would be intended for gathering information on terrorism offences, not to charge or convict a witness with a terrorism offence.

Going hand in hand with this, the recognizance with conditions provisions would allow a peace officer, with permission from the courts, to compel someone to appear before a judge in order to prevent terrorist activity. The use of investigative hearings and recognizance with conditions would be available strictly under defined conditions and subject to numerous procedural safeguards, including the requirement that it has the consent of the Attorney General.

During our hearings, Wesley Wark, visiting professor with the Graduate School of Public Affairs at the University of Ottawa stated:

> I believe these are potentially important tools in counter-terrorism investigations, although likely to be rarely used. This is not least because they presume, at least in the case of a recognizance with conditions powers, a kind of ticking time bomb scenario in which CSIS and the RCMP have last minute, reliable intelligence about an imminent threat.

The investigative hearing and the recognizance with conditions provisions were part of the Criminal Code from late 2001 until they expired on March 1, 2007. This bill seeks to re-enact to ensure their still available if necessary.

Second, this bill proposes to create new substantive offences making it a criminal offence to leave or attempt to leave Canada to knowingly participate in, or contribute to, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to carry out a terrorist activity, facilitate a terrorist activity, or commit an indictable offence for a terrorist group or a terrorist activity.

The proposed new offences would send a strong deterrent message, strengthen the hand of law enforcement to mitigate threats and increase penalties for this type of conduct.

Dr. Wark noted:

> With regard to criminalizing activities relating to travel outside of Canada to participate in or facilitate a terrorist activity, this too I think is a useful provision and a useful legal power . . . It does relate to a known threat, including the knowledge that we have that Canadians of Somali descent, for example, have returned to take part in the activities of an Al Qaeda linked organization called al Shabaab. The legal requirements to bring charges in these circumstances will be high . . . However, I regard this legal provision as having a useful and necessary deterrent effect and also a public education benefit.

Terrorism is a unique and particularly devastating type of criminal offence and it needs to be combated pre-emptively due to the immeasurable damage caused by those whose intent it is to disrupt the fabric of the targeted societies and to instill fear therein.

In hearing testimony from those responsible for ensuring the security of Canada against terrorism threats at all parts of the process, it became clear that there was unanimous support to fight the unconventional threat posed by such radical groups and individuals. Representatives from the RCMP, CSIS and CBSA all vowed that additional tools would facilitate a better fight in this regard.

Assistant Commissioner Gilles Michaud, National Security Criminal Investigations of the Royal Canadian Mounted Police noted:

> The RCMP supports Bill S-7 because it contains important tools which could enhance the RCMP's ability to prevent, detect, deny and respond to terrorist threats. With terrorism, even more so than with other forms of criminal activity, it is imperative that we prevent attacks before they occur wherever possible.

Mr. Richard McFadden, Director of CSIS, stated:

> . . . as a member of the broader national security community we are certainly supportive of any additional tools that will help our partners to better confront terrorism once it has reached the threshold of criminality. Any legislative or other provision that contributes to an environment that would facilitate our work is welcome.

Some argue that the threat posed by terrorists is waning and that post-9/11 concerns are no longer prevalent in Canada. The expert testimony received suggested that there remain viable threats of concern.

Mr. Michaud stated:

> We recognize that the greatest threat to Canada's national security is posed by the threat of criminal terrorist activity in Canada and abroad and we will do our utmost to prevent, detect, deny and respond to threats. . . .

He noted additionally that:

> The radicalization phenomenon is now almost enshrined in some of our vulnerable communities. We are seeing more and more individuals travelling abroad . . . From our perspective, these are tools we can put in our toolbox so if we ever get to a point where it is the last resort, that we have used all the other tools in our toolbox and we are still faced with a situation where the Canadian public is at risk, then we have these to use.

Dr. Wark testified that:

> . . . intelligence and law enforcement agencies will continue to rely on accumulated intelligence and evidence about terror plots, developed over time, some of which will come from foreign services, as was the case with Momin Khawaja. They will also continue to rely on the use of informants or undercover agents, as in the so-called Toronto 18 plot. The supposition that these powers will rarely be used is not an argument against having them. It is a kind of reassurance, I would say, a reassurance backed by what I regard as the reasonable, stipulated limitations on the use of these powers, as well as the reporting requirements that have now been attached in the revised legislation.

With regard to the need for new offences pertaining to leaving and attempting to leave Canada to participate in terrorist activities, Mr. Michaud stated:

> We have seen cases where individuals who were radicalized in Canada travelled to foreign countries to undertake terrorist training and/or to participate in foreign conflicts.

Similarly, Mr. Fadden also stated:

> CSIS is aware of at least 45 Canadians, possibly as many as 60, many of them in their early twenties, who have travelled or attempted to travel from Canada to Somalia, Afghanistan, Pakistan and Yemen to join al Qaeda affiliated organizations and engage in terrorism related activities. Clearly these individuals represent a threat both to the international community and to Canada, as some have or may eventually return to Canada after having acquired terrorism training or even having engaged directly in acts of terrorism.

Therefore, honourable senators, this bill is a necessary piece of legislation to provide tools to manage emerging threats to our national security. It balances these tools, however, with explicit, carefully crafted safeguards to ensure their lawfully implementation.

The recognizance with conditions provision allows a person to be detained for a maximum of 72 hours which, in critical situations, may be necessary to prevent a terrorist activity from being carried out. It will also allow a judge to place conditions on an individual upon the release of that person from custody. It is a combination of these features that could make the recognizance useful in specific situations. The ability to arrest and then place conditions on a person are only foreseen in those rare situations where police believe this would be necessary to prevent a terrorist activity from being carried out.

It is clear that this bill intends to achieve a mandate but refuses to do so at the cost of individual liberties. In hearing various questions during committee, several concerns or criticisms from honourable members were noted. I would like to touch on a few specifically.

It has been stated that Bill S-7 will grant too much power to authorities through the provisions of recognizance and investigative hearings.

First, I would reiterate the safeguards such as the need for the consent of the AG, the continuing right to counsel, the right against self-incrimination and the mandate of reasonable attempts before resort to the provisions.

• (1800)

Second, I would like to assert that the idea that this will result in an abuse of powers can be refuted by the notion that the bill was in existence and these powers were never used, let alone abused during their existence in law from January 20, 2007.

Concerns were additionally addressed regarding the treatment of underage would-be terrorists by the legislation. Specifically, there were concerns that the provisions making it a criminal offence to attempt to leave the country to participate or attempt to participate in a terrorist offence would deny rights to young offenders by subjecting them to the same treatment as adults and to potentially breach our international treaty obligations.

However, as explicitly noted in section 14(1) of the Youth Criminal Justice Act, that act takes precedence over any other act of Parliament so that if it is a young person, someone over

12 years of age but not yet 18 years old, he would be dealt with under the youth justice provisions. Therefore, just as with any other crime, there are additional safeguards for youth.

Honourable senators, the Government of Canada has no more fundamental duty than to protect the personal safety of our citizens and defend against threats to our national security. This is a mandate taken very seriously and this legislation has this guiding tenet as its aim.

Please let me close by urging all honourable senators to support this bill and, in doing so, to contribute to the safety and security of Canadians.

[*Translation*]

Hon. Roméo Antonius Dallaire: Honourable senators, I would like to give you my comments about Bill S-7. More specifically, I would like to draw your attention to certain points, since you will be voting on this bill, which I support as amended.

I believe that it is essential to draw your attention to certain aspects that, I hope, will be examined by our colleagues in the other place. Perhaps they will propose other amendments to the bill based on these observations.

Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act, more commonly known as the Combating Terrorism Act, has been the subject of debate and thorough examination by the Special Senate Committee on Anti-terrorism since March.

As Senator Frum explained, we heard from a number of witnesses who convinced us to approve each clause of this bill unanimously.

I would like to add, as I said yesterday, that we are still unable to properly review this bill in terms of security because we do not have access to documents, information or secret or classified briefings. Not having access to that classified material limits our ability to assess where this fits in our overall security envelope.

More and more, it is becoming evident that in this time of complex security scenarios, parliamentary access to classified material is essential in order for us to examine some of these very demanding and complex — even ambiguous at times — bills for our security.

The United States, Great Britain and Australia — two of which have Westminster-style parliaments like ours — already have measures in place to give their legislators access to such material, as well as the ability to make more informed decisions about national security and to take a logical approach to these different bills. We must follow their example and begin a process whereby we too can implement such measures so that parliamentarians will have the right to oversee the operation of the institutions responsible for our national and international security.

In addition, parliamentarians' access to information, one of the aspects of Bill S-7 that I found very worrisome, is also a subject that I am passionate about. I would like to focus on a point that Senator Frum has already discussed — the impact that this bill will have on youth, that is, people under 18 years of age.

Honourable senators, children do not start wars and young people do not send others into battle. Armed conflicts are incited by adults. For these reasons, adults have a responsibility to protect children and to prevent them from being used as instruments in any conflicts, including acts of terrorism. We must ask ourselves whether Bill S-7 makes it possible for us to carry out this very specific responsibility.

The new offences introduced by this legislative measure, such as the offence of leaving or attempting to leave Canada to commit an act of terrorism, are a means to prevent Canadians, particularly youth, from engaging in this type of conflict. However, the fight against terrorism and the prevention of attacks requires us to consider the causes of such threats. To fight terrorism, we must deal with its deep-seated causes such as exclusion and radicalization, especially of youth, and the manifestation of the rage burning in their souls, their hearts and their emotions.

In reviewing Bill S-7, our objective as legislators is to prevent other young people from getting deeply involved in terrorism. If we fail, we must at least ensure that these young people will have fair and equitable trials and that they will not be dealt with as adults.

That is why, honourable senators, I will spend some time discussing two factors that should prevent other young people from following the path of the Toronto 18: prevention and prosecution.

[*English*]

Honourable senators, the best way to deter a terrorist attack from happening in Canada, and notably committed by a Canadian, is to implement a robust prevention strategy. Criminalization, such as the Criminal Code amendments brought in by Bill S-7, is but one piece of what needs to be a much broader strategy to fight against terrorism, i.e., a national strategy within the global environment.

This past winter, the government published its first counterterrorism strategy entitled *Building Resilience Against Terrorism*. This is a positive start. We note that Canada is a proudly multicultural nation and that historically we have welcomed those oppressed or persecuted in other nations and given them fertile ground on which to flourish. This is not a given, however. Programs, practices and support networks are essential to ensuring that refugee and immigration populations feel included in the fabric of Canada.

What I have tried to raise in the process of considering Bill S-7 is that we need to recognize that refugees in Canada are often the result of armed conflict and political instability. Dr. Shelly Whitman, director of the Child Soldier Initiative at Dalhousie University, said in her testimony before the committee:

> . . . failure to address the inadequacies of our social integration for refugees has the ability to manifest itself into a problem that can result in the recruitment and use of our Canadian-born youth into armed groups and terrorist activity abroad.

We have seen evidence of this recruitment, particularly with al-Shabab in Somalia, the arrest of Mohamed Hersi in 2011, whose case has yet to come to trial, and others. In our prevention efforts, it is crucial to be aware of the fact that, for example, over 80 per cent of the Somali-Canadian community — one of Canada's largest African minority groups — is under 30 years of age. The best way to curb any potential interest or engagement in al-Shabab, or other such groups, is to fight marginalization and create a positive identity through inclusion and opportunity.

• (1810)

There are a few programs in place, such as the Cross-cultural Roundtable on Security and the RCMP's National Security Community Outreach. These are positive efforts that need to grow and continue, and not be curtailed or be under threat of being curtailed.

We also heard in testimony that it is crucial that Canada's police services get training in dealing with youth, particularly engaging with radicalized youth who can find their place in the diaspora within this country. If we are unable to reach marginalized youth who eventually find themselves and can find themselves in the hands of al-Shabab, then we need, secondly, to talk about prosecution.

Honourable senators, we also heard in testimony that the line between a youth engaged in terrorism activities and a youth engaged in child soldiering is blurry. A growing body of law exists to dictate the use, recruitment and activities of child soldiers in armed conflict. This includes the Convention on the Rights of the Child, the Optional Protocol on Children in Armed Conflict, the Paris Principles, the International Labour Convention Number 182, UN Security Council resolutions and precedents set by the Special Court for Sierra Leone, let alone the International Criminal Court in its recent findings.

International law is clear that a child soldier is not simply a 12-year-old with an AK-47. It includes all those under 18 who are:

> . . . forcibly or voluntarily recruited or used in hostilities by any kind of armed forces or groups in any capacity, including but not limited to soldiers, cooks, porters, messengers and those accompanying such groups. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, refer exclusively to a child who is carrying or has carried arms or weapons.

Key developments in international law now recognize the recruitment and use of children as a grave violation of international law and a prohibited category of crime against children and, in fact, crimes against humanity. However, a "child terrorist" is not defined with the same degree of clarity as a "child soldier." The Criminal Code of Canada defines "terrorist group" and "terrorist activity," but not a "terrorist" or, for that matter, a "child terrorist." Age-specific protection for those engaged in the activities outlined in section 83.01(*a*) simply does not exist. Further still, terrorism offences in the Criminal Code do not apply to acts committed during an armed conflict.

Youth offenders under the Combating Terrorism Act are, therefore, nowhere explicitly defined. The Department of Justice has explained, as is stated in the committee's report, that Bill S-7 would be a law of general application to persons of all ages and that the Youth Criminal Justice Act has exclusive jurisdiction over young persons in contact with the law.

When concerns were raised, however, about the particular and separate treatment youth should be afforded throughout the legal process, we were told that, in addition to the Youth Criminal Justice Act, the common law would apply. The courts rely upon the common-law presumption that any legislation adopted in Canada is consistent with its international legal obligations, both customary and conventional, such as the instruments I have cited above.

Honourable senators, I am not particularly of a legal mind. A military mind has a certain discipline, but is not as in-depth as a legal one. I understand that for those of you who have been trained to see the world in this way that the necessary tools may be in place to ensure that potential youth offenders will be treated properly.

I have succinctly read the Youth Criminal Justice Act and I believe in the laws of our land, of course. I also know, however, that I have dedicated not only my own efforts in eradicating the use of child soldiers, but I have become significantly familiar with the instruments applicable in that field.

For the public record, and future reference, I would like to cite article 7 of the statute of the Special Court for Sierra Leone, which puts together in one sentence stipulations that I believe are essential in any trial of a young person for terrorism offences. We are trying to define what is not defined. It states:

> Should any person who was at the time of the alleged commission of the crime below 18 years of age come before the court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

Canada, as a member of the United Nations Security Council, helped draft this statute tabled in August 2000. Since its inception, Canada has also been one of the major donors funding the Special Court for Sierra Leone which dealt with essentially with child soldiers on all sides. The lead judge, and only non-African, was an admirable Canadian, Brigadier-General (Retired) Justice Pierre Boutet, who was once the Judge Advocate General of the Canadian Forces and who spent six and a half years in that court.

Article 7 broadly reflects the stipulations of the declaration of principle of the Youth Criminal Justice Act, including section 3.1(*a*)(2) that states that the YCJA is intended to:

> . . . rehabilitate young persons who commit offences and reintegrate them into society . . .

This is good and strong and is to be liberally construed, but I believe that article 7 of the Sierra Leone statute pushes our obligations to youth rehabilitation and reintegration explicitly further. If accomplished, if the mandate of encouraging the

"assumption of a constructive role in society" is fulfilled, this will be a significant step in ensuring the safety of Canada and the world from terrorism, and the abuse and use of children.

Finally, I remind honourable senators that the Anti-terrorism Committee has encouraged the Department of Justice to conduct a child rights impact assessment on this legislation and I bring to your attention the observations. I note that, as is outlined in the 2007 report of the Standing Senate Committee on Human Rights entitled *Children: The Silent Citizens*, such assessments should be conducted prior to bills becoming law to determine the potential effects that any proposed legislation could have on children. I would argue, and have argued, that the impact of being labelled a terrorist at a young and developing age could be devastating and, in fact, misconstrued in the face of the law and the legislation we are presented with.

Further, in accordance with both *Children: The Silent Citizens* and our expert witness testimony, there is often a difference between cup and lip with respect to the way in which legislation is anticipated in its operation and the way it in fact actually ends up operating for a variety of reasons. That is why child impact assessments are meant to be a continuous process. The predicted impact is first assessed, and later on an evaluation of the actual impact of implementation is conducted. This evaluation of legislation in practice would be open to seeking community and civil society feedback, which is critical to conducting a complete analysis.

Child impact assessments should be normal practice in Parliament. I am therefore glad that the Anti-terrorism Committee's report endorses such an analysis to be conduct by the Department of Justice — a very progressive move in my opinion.

The report's observations also state:

> . . . in accordance with the views of certain witnesses, the committee endorses a detailed analysis of the bill's provisions by the Department of Justice to ensure that they are interpreted in accordance with YCJA principles as well as Canada's international obligations regarding the rights of young persons.

• (1820)

I believe it is essential that this assessment be completed and made available before the sunset provisions of this legislation are considered in this chamber again.

I conclude, honourable senators, by reminding you as we move to enact — and I support the enactment of an amended Bill S-7 — that child soldiers and, by extension, child terrorists are to be considered primarily as the victims of those who recruited them, the adults. They do not have the same mental or physical culpability as those adults. We must do everything in our power to make every young Canadian feel a part of the fabric of this nation and its future.

Hon. A. Raynell Andreychuk: Senator Dallaire's comments lead me to make a few statements on the record. The Youth Criminal Justice Act in no way indicates that children should not be made accountable. The process of developing from being a youth to an adult means maturation. Children should not be held accountable in the same way as adults are, but they have to, in their growth, have some capability of understanding the consequences of their actions. The acts that we have had in Canada to do with children recognize that they are in a state of development, and, therefore, we take into account what would be in their best interests in developing into proper and responsible citizens.

I do not believe that children should not be accountable, be it for terrorist acts or for petty theft. What we should do is take into account their capability to understand the consequences of their actions. I believe Bill S-7 falls within that because the Youth Criminal Justice Act does apply to this bill, as it does to every other bill.

I do not think that there is much debate in Canada that we take into account the youth justice system when we charge children. That act automatically clicks in and takes precedence. I think that to try to draw some parallels from Sierra Leone is not the way to go.

I think it is better if the Department of Justice is mandated to constantly review how we apply the act. As the honourable senator said, there may be some difference in the intention of legislators and the implementation. To that extent, I think that the Department of Justice is aware of that and should have a role in constantly assessing it because children are so vulnerable.

The Sierra Leone court that Senator Dallaire referred to — and I should say that I have been there and discussed the matters that he pointed out with the judge — was an ad hoc court. It was starting from scratch. It had to develop its own rules. It was limited in time, and it had a specific mandate. It was a heroic struggle for the court, the prosecution and the defence counsel to be seen to be fair, as well as to actually be fair and just.

The comments made with respect to juveniles and child soldiers were in the context of the Sierra Leone court. It may be instructive to us, but I do not think it is binding, nor does it create new law in any way that Canada has not considered in the past.

I wanted an assurance on the record because the testimony of the honourable senator implies that there is, somehow, something wanting in our system. The only thing that is wanting in our system is the very same thing that we have struggled with for decades and will continue to struggle with, and that is how to maintain a balance of security for society while working in the best interests of children and their development.

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Bill, as amended, read third time and passed.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

ELEVENTH REPORT OF COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the eleventh report of the Standing Committee on Internal Economy, Budgets and Administration (Senators' Travel Policy), tabled in the Senate on May 17, 2012.

Hon. David Tkachuk moved the adoption of the report.

He said: Honourable senators, this report speaks to senators' travel policy, and it is the eleventh report of the Standing Committee on Internal Economy, Budgets and Administration. We have taken the various guidelines that we have received from past audits and studies of our own, and all the decisions are reflected in one travel policy documented. The format is consistent with the Senate's policy framework, including monitoring and reporting, and the policy recognizes the importance of providing senators with appropriate travel assistance and sets some context regarding the type of travel. Of course, we tried, as a philosophy, to have senators responsible for their own travel points so that they would have less reason to come to Internal Economy and steering. We designated numbers for staff as to how many travel points one can have for family members, dependents and one's travel companion.

With that, I would like to ask the Senate to approve this report.

(On motion of Senator Tardif, for Senator Kenny, debate adjourned, on division.)

• (1830)

MENTAL HEALTH, ILLNESS AND ADDICTION SERVICES IN CANADA

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Hubley, calling the attention of the Senate to the 5th anniversary of the tabling of the Standing Senate Committee on Social Affairs, Science and Technology's report: *Out of the Shadows at Last: Transforming Mental Health, Mental Illness and Addiction Services in Canada*.

Hon. Elizabeth Hubley: Honourable senators, Senator Callbeck is very interested in having an opportunity to speak to this item. Therefore, I would like to adjourn this inquiry in her name.

(On motion of Senator Hubley, for Senator Callbeck, debate adjourned.)

[*Translation*]

OLD AGE SECURITY

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Callbeck, calling the attention of the Senate to the inequities of the Old Age Security Allowance for unattached, low-income seniors aged 60-64 years.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, we are discussing Senator Callbeck's inquiry to call the attention of the Senate to the inequities of the Old Age Security Allowance for unattached, low-income seniors aged 60-64 years.

This is an important issue. We have seen, and we will continue to see for the next few years, important debates on the adequacy of pensions — both private and public pension plans. There are also many issues that affect private pension plans. It is very important to debate this issue and I intend to use the full amount of time allotted to me in order to examine the issue. Unfortunately, I have not had the time to complete my research. I hope to complete it in the next few days.

I wish to draw your attention, honourable senators, to this problem and shed new light on it, which, I believe, could help us all. For these reasons, I move the adjournment of the debate for the remainder of my time.

(On motion of Senator Carignan, debate adjourned.)

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

May 31, 2012

Mr. Speaker,

I have the honour to inform you that Mr. Stephen Wallace, Secretary to the Governor General, in his capacity as Deputy of the Governor General, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 31st day of May, 2012, at 6:16 p.m.

Yours sincerely,

Patricia Jaton,
Deputy Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bill Assented to Thursday, May 31, 2012:

Restoring Rail Service Act (*Bill C-39, Chapter 8, 2012*)

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Notices of Motions:

Hon. Claude Carignan (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, June 5, 2012, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, June 5, 2010, at 2 p.m.)

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