

SENATE



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CANADA

**REPORT ON
THE BUDGET IMPLEMENTATION ACT, 2009**

**Standing Senate Committee on
National Finance**

Chair

The Honourable Joseph A. Day

Deputy Chair

The Honourable Irving R. Gerstein

June 2009

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MEMBERS

Honourable Joseph A. Day – Chair

Honourable Irving R. Gerstein – Deputy-Chair

Honourable Catherine S. Callbeck

Honourable Grant Mitchell

Honourable Maria Chaput

Honourable Nancy Ruth

Honourable Pierre De Bané, P.C.

Honourable Richard Neufeld

Honourable Consiglio Di Nino

Honourable Pierrette Ringuette

Honourable Art Eggleton, P.C.

Honourable Michel Rivard

Ex-officio members of the committee:

The Honourable Senators LeBreton, P.C., (or Comeau) and Cowan (or Tardif).

In addition, the Honourable Senators Andreychuk, Banks, Cordy, Dawson, Martin, Munson, Nolin, Oliver, Spivak and Wallin were members of the committee or participated from time to time during this study.

Staff of the committee:

Mr. Guy Beaumier and Mr. Jean-François Nadeau, Analysts, Parliamentary Information and Research Services, Library of Parliament;

Ms. Francine Pressault, Communications Officer, Communications Directorate;

Mr. Adam Thompson, Clerk of the committee, Committees Directorate; and

Ms. Natalie Lemay-Paquette, Administrative Assistant, Committees Directorate.

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Thursday, March 12, 2009:

The Honourable Senator Cowan moved, seconded by the Honourable Senator Hubley:

That, notwithstanding any rules or usual practices, and without affecting any consideration or progress made by the Senate with respect to Bill C-10, the *Budget Implementation Act, 2009*, the following committees be separately authorized to examine and report on the following elements contained in that bill:

(a) The Standing Senate Committee on Energy, the Environment, and Natural Resources: those elements dealing with the *Navigable Waters Protection Act* (Part 7);

(b) The Standing Senate Committee on Banking, Trade, and Commerce: those elements dealing with the *Competition Act* (Part 12);

(c) The Standing Senate Committee on Human Rights: those elements dealing with equitable compensation (Part 11); and

(d) The Standing Senate Committee on National Finance: all other elements of the bill, in particular those dealing with employment insurance; and

That each committee present its final report no later than June 11, 2009.

After debate,

The question being put on the motion, it was adopted.

Paul C. Bélisle

Clerk of the Senate

REPORT ON THE BUDGET IMPLEMENTATION ACT 2009

I. INTRODUCTION AND MANDATE

The *Budget Implementation Act, 2009* (BIA), formerly known as Bill C-10,¹ was introduced as an omnibus bill that amended or introduced 42 acts of Parliament. The bill was expedited through Parliament in order to implement the government’s stimulus measures designed to deal with what may be the most serious global recession since the Great Depression. At the time of the passing of Bill C-10 it was understood that various committees of the Senate would be permitted a more detailed examination of the elements that make up this Act.

Consequently, on March 12, 2009 the Senate conferred the following order of reference on the committee:

“To examine the following elements contained in Bill C-10, the *Budget Implementation Act, 2009*: Parts 1-6, Parts 8-10 and Parts 13-15, and in particular those dealing with employment insurance.”

Study of Part 7—the *Navigable Waters Act* was the mandate of the Standing Senate Committee on Energy, the Environment, and Natural Resources; Part 11—the *Public Sector Equitable Compensation Act* was the mandate of the Standing Senate Committee on Human Rights; and Part 12—the *Competition Act* was the mandate of the Standing Senate Committee on Banking, Trade and Commerce.

¹ Throughout the rest of the report, Budget Implementation Act and the term Bill C-10 will be used interchangeably.

II. OVERVIEW OF THE BUDGET IMPLEMENTATION ACT, 2009 (BIA)

The following is a brief description of the major changes brought about by the adoption of Bill C-10 for those parts examined by this committee.

A. Part 1: Amendments In Respect Of Income Tax

Part 1 of Bill C-10 amended the *Income Tax Act* in a number of areas. First, the basic personal amount that Canadians can earn tax-free and the upper limits for the two lowest personal income tax brackets were increased by 7.5 per cent above their 2008 amounts, thereby also increasing the income levels at which income testing begins for the base benefit under the Canada Child Tax Credit and the National Child Benefit supplement.

Second, the provisions related to registered Retirement Savings Plans and registered Retirement Income Funds were amended to allow for the recognition of losses in accounts between the time of the annuitant's death and final distribution of property from the account.

Other changes included: a \$1,000 increase in the amount upon which the Age Credit is calculated; an extension of the Mineral Exploration Tax Credit; an increase to \$25,000 in the maximum amount eligible for withdrawal from a Registered Retirement Savings Plan; and an increase in the amount of active business income eligible for the 11 percent small business income tax rate to \$500,000.

Part 1 also repealed section 18.2 of the *Income Tax Act* which, effective 2012, would have imposed limits on the deductibility of interest paid on loans made in Canada for the purposes of investing abroad; clarified the rules relating to the timing of acquisition and control of a corporation; and required some entities to file their tax information electronically.

This part of Bill C-10 also brought in a number of measures that were announced before Budget 2009 but had yet to be implemented, including rules to reduce the required minimum amount that must be withdrawn from a registered retirement income fund or from a variable benefit money purchase pension plan by 25% for 2008.

B. Part 2: Amendments in Respect of the Sales and Excise Taxes

Part 2 of Bill C-10 amended the *Excise Act, 2001* and the *Excise Tax Act* to implement measures relating to the use of the Business Number (BN) and related information. This will allow for the sharing of business-related information for

the purposes of federal, provincial, municipal or Aboriginal government programs in order to reduce the paper burden on businesses.

C. Part 3: Amendments to the Customs Tariff

In Part 3 Bill C-10 amends the Customs Tariff, which imposes duties and other charges on imported goods, and harmonizes the description and coding of traded goods. It split the tariff class for conveyances and containers engaged in the international commercial transportation of goods or passengers so that the Governor in Council could create regulations prescribing the conditions for the importation of specific conveyances and containers (Tariff Items 9801.10.10 and 9801.10.20).

Moreover, Part 3 modifies the tariff treatment of milk protein substances by granting preferential tariff treatment for most exporting countries. This modification of the tariff treatment is the result of a re-negotiation of Canada's World Trade Organization (WTO) tariff concessions, initiated under GATT Article XXVIII, with the European Communities (EC) and Switzerland. These changes are retroactive to September 8, 2008.

According to correspondence received from the Department of Finance:

“The dairy products that were the object of a tariff modification are milk protein substances with a milk protein content of 85% or more by weight, calculated on the dry matter. For these products a tariff rate quota is being introduced that will bring these substances within Canada's supply management system.

The over-quota tariff rate that applies to these products is being increased from 6.5 to 270 percent. This was originally tabled as a Notice of Ways and Means Motion in June 2008 and responds to concerns expressed by dairy farmers.

This action will be welcomed by dairy farmers who had asked the government to increase import control on these products. Dairy processors, on the other hand, will be limited in their ability to import these products above a certain fixed volume. For quantities imported below that fixed volume, dairy processors and other importers will be able to import these substances at an in-quota tariff rate of free.”

Finally, Part 3 reduced tariff charges, through reductions in the Most-Favoured-Nation and Preferential Tariff rates of duty on various types of manufacturing and industrial equipment, including gas and other turbines, blades, pumps, ovens, freezers, food manufacturing equipment, filters, dishwashers, scales, self-propelled trucks, paper manufacturing equipment, printing machinery, hydraulic presses, machinery used in manufacturing automotive brakes, welding equipment, duplicating machines, industrial robots,

machinery used to make fertilizer from fish, waste compactors, rollers, flywheels, universal joints, transmission parts, ballast for lights, metal magnets, soldering irons, arc welding machinery and equipment, automatic circuit breakers, surge suppressors, control switches and panels, cable connectors, automotive control switches, motor starters, moulded parts, cathode ray tubes, microwave tubes, receiver and amplifier tubes, signal generators, and glass and ceramic electrical insulators.

D. Part 4: Employment Insurance

Part 4 of Bill C-10 amended the *Employment Insurance Act* to retain the Employment Insurance (EI) premium rate for 2010 at \$1.73 per \$100, the rate set for both 2008 and 2009. At this rate, revenues from premium contributions are not expected to cover the cost of EI payments. The total expected net fiscal cost for the premium rate of \$1.73 per \$100 in 2009 and 2010 is \$4.5 billion. In 2011 and beyond, the Canada Employment Insurance Financing Board is expected to set the premium rate at the forecasted break-even level. However, it is unlikely to do so as it is limited to increases of 15 cents per annum in the premium rate.

In the 2009 federal budget, the government introduced a number of benefit enhancements: an additional five weeks of EI benefits for recipients; more financial support for up to 10,000 unemployed long-tenured workers who are gaining new skills and taking work training; extended work-sharing benefits for all recipients; extended benefits under the Wage Earner Protection Program to cover severance and termination pay for four weeks from a non-paying employer; and increased support for EI training programs. Cumulatively, these benefit enhancements would cost an estimated \$2.9 billion in 2009–2010 and 2010–2011.

Part 4 also eliminated Pilot Project No. 10, which provided five extra weeks of benefits to EI recipients in regions where the unemployment rate has exceeded 10% in any of the last six months because this benefit has been extended to all regions of the country until September 12, 2010.

Lastly, the 2009 federal budget stated that the Canada Employment Insurance Financing Board would be mandated not to recover the two-year deficit from these benefit enhancement measures. On August 1, 2010, the federal government should credit the Employment Insurance Account with \$2.9 billion to cover the estimated cost of the benefit enhancement measures in 2009–2010 and 2010–2011. In the interim, all shortfalls will come from the Consolidated Revenue Fund.

Changes to the *Employment Insurance Act* were specifically identified within the mandate given to the committee as an element for detailed examination and study. The committee's findings on this and other aspects of Employment Insurance are contained in a separate section of this report.

E. Part 5: Stability and Efficiency of the Financial System

Part 5 of Bill C-10 had 7 Divisions. The first division amended the *Financial Administration Act* to authorize the Minister of Finance to purchase corporate securities, and to offer credit or loan guarantees to companies, in order to promote the stability or maintain the efficiency of the financial system in Canada.

Division 2 of Part 5 of Bill C-10 amended the *Canada Deposit Insurance Corporation Act* to allow the CDIC to enhance its ability to safeguard financial stability in Canada. In particular, the provision allows the CDIC the flexibility to carry out its mandate without attempting to minimize its own exposure to losses, when the situation so requires. Division 2 also sets out a rule governing CDIC's increased maximum indebtedness, creates a new category within the framework of deposit insurance for Tax-Free Savings Accounts, and makes consequential amendments to other acts.

Division 3 of Part 5 amended the *Export Development Act* to temporarily expand the Export Development Corporation's mandate to include the development of domestic trade for two years.

Division 4 of Part 5 amended the *Business Development Bank of Canada Act* to increase the maximum amount of the Bank's paid-in capital.

Division 5 of Part 5 amended the *Canada Small Business Financing Act* to increase the eligible loan amount that a borrower may have outstanding from \$250,000 to \$350,000, and to \$500,000 for real property. Institutions with a portfolio above \$500,000 are allowed to claim reimbursement on losses of up to 12% of the value of their portfolio, up from the current 10 percent. These changes apply to new loans made after March 31, 2009.

Division 6 of Part 5 amended a number of Acts governing financial institutions in order to improve access to credit, enhance consumer protection and authorize the Government of Canada to acquire holdings in financial institutions, if such actions are considered necessary to ensure the stability of the financial system.

The final division of Part 5 sets out measures for developing a Canadian securities regulation regime. In particular, it enacted the *Canadian Securities Regulation Regime Transition Office Act*, and described the Office's purpose, structure and management principles. It also provided for the payment of sums of money to the provinces. Because of time constraints only public sector officials were heard on this matter, and hence, the committee was not able to give Division 7 of Part 5 the attention it deserved.

These and related matters are dealt with in greater detail in a later section of the report.

F. Part 6: Infrastructure and Housing Payments

Part 6 of Bill C-10 authorized payments to be made out of the Consolidated Revenue Fund after requisition by the approved minister for various federal programs related to infrastructure, economic development, science and technology initiatives, repairs and maintenance of post-secondary institutions, First Nations housing, improvements in social housing, construction of social housing for low-income seniors and persons with disabilities, renovations and construction of territorial social housing, and the development of electronic health records and related systems. In relation to these initiatives, Part 6 of Bill C-10 created the Infrastructure Stimulus Fund, the Green Infrastructure Fund, and the Community Adjustment Fund. Programs are also implemented through existing programs, such as the Building Canada Fund and the Building Canada initiative.

These and related matters are dealt with in greater detail in a later section of the report.

G. Part 7: Amendments to the *Navigable Waters Act*

This part of Bill C-10 was referred to the Standing Senate Committee on Energy, the Environment and Natural Resources

H. Part 8: Miscellaneous Provisions

i) *Wage Earner Protection Program Act* Amendments

Part 8 of Bill C-10 amended the *Wage Earner Protection Program Act*, which is a program designed to provide payments in respect of wages owed to individuals by employers who are bankrupt or subject to a receivership. The amendment expanded the definition of eligible wages to include severance and termination pay received by an employee six months prior to bankruptcy or six months prior to the day on which a receiver was appointed. The eligible forms of termination in the Wage Earner Protection Program Regulations were expanded to include resignation or retirement, termination of the individual's employment or expiration of an individual's term of employment. Thus, individuals with unpaid severance and termination pay are now eligible for payments under the Wage Earner Protection Program. The proposed provisions apply to wages, severance and termination pay from bankruptcies occurring after January 26, 2009. Both Mr. Weir and Mr Benson, the union representatives expressed support for this measure.

ii) *Canada Student Financial Assistance Act* Amendments

Part 8 of Bill C-10 amended the *Canada Student Financial Assistance Act* to enable the Minister of Human Resources and Skills Development to deny financial assistance to a qualifying student in order to prevent the commission of an offence by a designated educational institution or to prevent the student or the Crown from being exposed to financial risk.

Part 8 of Bill C-10 also amended both the *Canada Student Financial Assistance Act* and the *Canada Student Loans Act* to include new penalties for the omission of information by any person in respect of a student loan and new penalties for other offences, which would include the suspension of loan funds, changes in interest-free status, changes in repayment schemes and immediate repayment.

Further, under the changes to both the *Canada Student Financial Assistance Act* and the *Canada Student Loans Act*, students and other individuals could submit information to the Minister of Human Resources and Skills Development and the Minister could rescind or modify imposed penalties. Both Acts were also amended in order to terminate all obligations of the borrower if the borrower dies.

Finally, the *Canada Student Financial Assistance Act* was amended to require the Chief Actuary of the Office of the Superintendent of Financial Institutions to report on financial assistance provided under the Act by July 31, 2009, and at least every three years thereafter.

On April 28, 2009, the committee heard testimony from three student representatives: Mr. Zach Churchill, National Director and Mr. Rick Theis, Government Relations Officer, the Canadian Alliance of Student Associations (CASA); and Ian Boyko, Campaigns and Government Relations Coordinator, the Canadian Federation of Students (CFS).

The student representatives made several observations on aspects of Bill C-10 that affected students. Of particular interest was their concern with the provisions for a temporary three-year expansion of the Canada Graduate Scholarship program, including \$17.5 million for the Social Sciences and Humanities Research Council (SSHRC), which according to the language of the budget documents will be focused on business-related degrees.

The student representatives noted that the government included these provisions because it felt that graduate students in these disciplines had been treated unfairly under the current system. They comprised approximately 30 per cent of students in the social sciences and humanities, but received only 2 per cent of Canada's graduate scholarships each year. The government estimates that this new funding will furnish, over three years, an additional 300 targeted

scholarships. This raises the total number of Canada Graduate Scholarships for students in business-related degrees that SSHRC will support to 10 per cent per year.

CASA had two concerns about this assertion. First, directing funds in this manner constitutes a worrisome interference by the federal government into how SSHRC and, by proxy, all the other granting councils make funding decisions. In their view, a sustainable research capacity depends on the use of merit and peer review as the best means to ensure that the best possible research is funded as well as to insulate the academic research that is undertaken from the potential for politicization and other popularity tests. They believe that this is why the *Social Sciences and Humanities Research Council Act* stipulates that the council may choose to expend the money it receives at its own discretion. It is also why SSHRC and the other agencies have tried to uphold the merit principle since their inception.

Their second concern with this budget initiative is that there is no guarantee that attempts to earmark scholarships for business-related degrees will have the desired effect. The very definition of what is business-related is so nebulous and unstructured that a student from virtually any of the social science disciplines — from history to economics, sociology and marketing — would qualify, thus watering down the scholarships' intended effect.

So while CASA acknowledges the important contributions that students of business make to Canadian culture, they would ask the government to invest in a more effective, holistically designed system aimed to enlarge the access and funding opportunities for all social science graduate programs.

iii) *Financial Administration Act* Amendments

Part 8 of Bill C-10 amended the *Financial Administration Act* to grant agent Crown corporations the power to lease their property. The Act was also amended to grant the Governor in Council the power to create regulations for the lease of property owned by an agent Crown corporation if the power is not specifically granted by another Act. Moreover, the changes prohibit employees of a Crown corporation from being appointed a director of the Crown Corporation, and Crown corporations are required to hold annual public meetings.

Part 8 of Bill C-10 also amended the *Financial Administration Act* to clarify that the Treasury Board will indemnify directors and officers of the Crown Corporation during legal proceedings according to the rules prescribed by regulation.

The *Financial Administration Act* was also amended to decrease the frequency of special examinations of parent Crown corporations unless requested by the Governor in Council or the Auditor General, and the proposed changes

require special examination reports to be made public and submitted to the appropriate minister and to the Treasury Board.

Consequential amendments were also made to other Acts governing various independent and agent Crown corporations to ensure that employees of the board of the corporation are not appointed directors; changes were also made for these corporations in respect of a requirement for public meetings.

I. Part 9: Payments to Provinces

Part 9 of Bill C-10 changed the formula for calculating entitlements to fiscal equalization and the Canada Health Transfer (CHT).

With respect to equalization entitlements, the change introduced a new formula that would place a ceiling on equalization payments as well as a new formula for Ontario becoming a recipient province.

With respect to the CHT, the bill introduced technical changes that will ensure that all provinces receiving equalization receive the same per capita cash contribution.

These are complex programs that would require more time than the committee had available to examine their impact on the provinces. However, the committee has on several occasions in the past studied these programs and remains committed to revisit them in the future.

J. Part 10: *Expenditure Restraint Act*

Part 10 of Bill C-10 enacted the *Expenditure Restraint Act* in order to limit federal expenditures on federal public service compensation. The new Act limits the increase in the rate of pay for federal public servants to 2.5% in 2006-2007, 2.3% in 2007-2008, and 1.5% in each of 2008–2009, 2009–2010 and 2010–2011. Moreover, restructuring the rates of pay is prohibited and certain other labour terms will remain at their current levels between December 8, 2008 and March 31, 2011.

These and related matters are dealt with in greater detail in a later section of the report.

K. Part 11: *Public Sector Equitable Compensation Act*

Part 11 of Bill C-10 was referred to the Standing Senate Committee on Human Rights.

L. Part 12: Amendments to the *Competition Act*

Part 12 of Bill C-10 was referred to the Standing Senate Committee on Banking, Trade and Commerce.

M. Part 13: Amendments to the *Investment Canada Act*

Part 13 of Bill C-10 increased the minimum threshold above which a proposed or implemented investment by a non-Canadian World Trade Organization (WTO) investor could be subject to review under the *Investment Canada Act*.² In 2009, the minimum review threshold is set at \$312 million.³ The changes increase the minimum review threshold for an investment by a WTO investor to \$600 million in the first year after implementation, \$800 million in the second year and \$1 billion in every year that follows. Thereafter, the minimum review threshold for WTO investors will increase each year at the same rate as nominal gross domestic product, according to the established formula. The non-WTO investor minimum review threshold remains unchanged by Part 13 of Bill C-10. Additionally, the lower review threshold for transportation, banking and uranium mining has been repealed. Only investments by non-Canadians in cultural businesses continue to face the lower review threshold, which is currently set at a value of \$5 million in assets.

Furthermore, the review of a proposed or implemented investment of a non-Canadian will be referred to the Governor in Council if the investment could be injurious to national security. The Governor in Council could then take any measures needed to protect national security.

Lastly, the changes require a report to be produced on the administration of the *Investment Canada Act* in each fiscal year, and require that report to be made available to the public. The Minister of Industry (or the Minister of Heritage in the case of a cultural business investment) would also be permitted to disclose information from an investment review, unless the information prejudiced the Canadian business or investor.

At the Standing Senate Committee on Banking, Trade and Commerce on May 13, 2009, Mr. George Addy, Chair of the Policy Committee, of the Canadian Chamber of Commerce made the following comments about the *Investment Canada Act* amendments in Bill C-10:

“It had good news and bad news. The good news is they have increased the threshold, which now is the scope so you only focus on big

² Since 1985, only one non-cultural business investment has been formally disallowed under the *Investment Canada Act*.

³ The 2008 minimum review threshold was \$295 million, while it was \$281 million in 2007.

deals. The bad news, in our view, is the national security amendments. You may ask why; national security is a good thing. It is not defined, there is no limitation period and there is no financial threshold to be passed before it applies. If you are foreign and you buy 5 per cent of a company, you could be at risk in that.”

He added further:

“I can tell you from my practice that that is creating concern in the investment community. In my mind, that is not encouraging investment in Canada.”

N. Part 14: Amendments to the *Canada Transportation Act*

Part 14 of Bill C-10 amended the definition of “Canadian” in the *Canada Transportation Act* that applies to airlines by changing the Canadian ownership minimum of 75% to a foreign ownership ceiling specified by regulation. The Act was also amended to allow the Governor in Council to specify a foreign ownership ceiling by regulation that may not be more than 49% in respect of all non-Canadians and any class of non-Canadians. Thus, the ceiling for foreign ownership of domestic airlines is increased from 25% to no more than 49%.

O. Part 15: Amendments to the *Air Canada Public Participation Act*

Part 15 of Bill C-10 removed foreign ownership restrictions in respect of Air Canada found in the *Air Canada Public Participation Act*.⁴ With the changes, Air Canada is now subject to the foreign ownership rules outlined in the *Canada Transportation Act* (see previous section on Part 14 of Bill C-10).

⁴ Currently, non-Canadians are prevented from owning more than 25% of Air Canada’s voting shares because of restrictions in the *Air Canada Public Participation Act*.

III. OBSERVATIONS ON PART 4: THE EMPLOYMENT INSURANCE PROGRAM⁵

As already mentioned in the section on Part 4 of Bill C-10, the Senate specifically mandated the committee to examine the changes brought about to the Employment Insurance program by the enactment of Bill C-10. This section reports on that work.

Employment Insurance provides temporary financial assistance for unemployed Canadians while they look for work or upgrade their skills. Canadians who are sick, pregnant or caring for a newborn or adopted child, as well as those who must care for a family member who is seriously ill with a significant risk of death, may also be assisted by Employment Insurance.

Several witnesses commented on the changes to the EI program that were brought about by Bill C-10. This allowed the committee to examine numerous aspects of the EI program and the impact of the new legislation on Canadians. The committee's observations and recommendations are presented below.

A. The Basic Benefits

There are several types of benefits available to Canadians, depending on their situation. The most common are known as the regular benefits, which are available to individuals who lose their jobs through no fault of their own (for example, due to shortage of work, seasonal layoffs, or mass layoffs) and who are available for and able to work, but can't find a job.

The basic benefit rate is 55% of average insured earnings up to a yearly maximum insurable amount of \$42,300. This means a claimant can receive a maximum payment of \$447 per week. EI payments are taxable income, meaning that applicable taxes will be deducted.

It is widely acknowledged that many lower-paid workers cannot survive on 55% of their insurable earnings, and in periods of mass unemployment will not find jobs to support themselves and their families. Historically, this challenge was addressed with a tiered system of income replacement. From 1942 -- when the Unemployment Insurance Act was first implemented -- to the 1971 set of reforms to UI, there were different benefit rates set out for singles and for the unemployed who were supporting dependants. The benefits schedule was originally based on seven different income classes -- the lowest paid workers saw 63% of their previous earnings replaced, while the highest paid workers received 37%. In the 1950s, two additional income classifications were added, and benefits were upgraded.

⁵ Information on the program is available at the Service Canada web site at: <http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

Today the EI system provides two ways of supplementing basic benefits.

A claimant might be eligible for a Family Supplement benefit if he/she is in a low-income family—low-income meaning net income up to a maximum of \$25,921 per year — with children and either spouse receives the Canada Child Tax Benefit (CCTB). Nationally, EI recipients receiving this benefit (predominantly working women) have steadily decreased from 11.4% in 1999-2000, to 7.7% in 2006-07.

Claimants can also work a certain amount of time while receiving EI benefits without a deduction from their benefits. If a person works part-time while receiving regular, parental, compassionate care or fishing benefits, they can earn \$50 per week or 25% of weekly benefits, whichever is higher.

Special measures have been put in place to ensure workers can accept all available employment while on claim. This special earnings pilot project increases the amount that a claimant can earn while working part-time and receiving EI benefits by allowing the claimant to earn the greater of \$75 or 40 % of weekly benefits. This pilot project, originally aimed at workers living in participating economic regions between December 11, 2005 and December 6, 2008, was extended to all regions effective December 7, 2008, through December 4, 2010. Through the special earnings pilot project, the Government hopes to evaluate the effects of these provisions on the participants and on the labour market.

Approximately 10% of men report earnings while drawing EI benefits. Among women, the figure rises to 18%. (In 1984 those figures were 6.5% for men and 11.6% for women.) However, during a period of widespread job loss, relying on the supplementation of income supports with paid work may prove an inadequate strategy. Therefore, the majority of the committee recommends that:

RECOMMENDATION 1

The Government should consider introducing a system of tiered benefits for the duration of the recession and increase eligibility for Family Supplement benefits, with the goal of providing higher rates of income replacement for those with lower incomes.

B. The Benefit Period

As part of a temporary initiative called “The extended duration of Employment Insurance (EI) Regular Benefits”, the length of time regular benefits can be paid is extended 5 weeks to between 19 and 50 weeks. The initiative is effective on all claims where the benefit period has not ended before March 1, 2009, or where the benefit period does not begin after September 12, 2010. The number of weeks of benefits which may be paid is determined at the start date of

the benefit period, based on the unemployment rate in the claimant's region and the amount of insurable hours that have been accumulated in the qualifying period. The number of weeks of benefits which may be paid does not change even if the claimant moves into another region after the start date of his/her claim.

Depending on the region, the change increases the weeks of regular benefits individuals can receive by up to five weeks and increases the maximum number of weeks from 45 to 50.⁶ This new limit mirrors the benefit period available under Pilot Project No. 10, which provided five extra weeks of benefits to EI recipients in regions where the unemployment rate exceeded 10% in any of the last six months. Since the 2009 federal budget proposed to increase the duration of EI benefits by five weeks for all recipients, Pilot Project No. 10 was perceived as no longer needed. Under Bill C-10 the extra five weeks of EI benefits will continue only until September 12, 2010. Those regions that previously enjoyed extra coverage through Pilot Project No. 10 will cease to receive such benefits at that time. This loss of benefits for these regions may not be in the best public interest. Therefore, the committee recommends that:

RECOMMENDATION 2

The Government should consider, if needed, maintaining the benefits available under Pilot Project No. 10 beyond September 12, 2010, for those regions that qualified for the benefits in the original project.

There is a two-week unpaid waiting period before a claimant can receive any EI benefits. Earnings (vacation or severance pay) allocated during the two-week waiting period will be deducted in the first three weeks for which benefits are otherwise payable following the waiting period.

Claimants who quit a job without just cause or are fired for misconduct are ineligible for regular benefits. Just cause includes the loss of employment because of discrimination, sexual harassment, working conditions that constitute a danger to health and safety, significant modification of terms and conditions respecting wages or salary, leaving to care for a child or immediate family member, major changes in work duties, or a change in the work location of a spouse.

C. Program Coverage

There was interest expressed in the proportion of unemployed Canadians that actually received benefits from the program. It was suggested that as few as 40% of unemployed workers receive EI benefits. As Mr. Yves Giroux, Director,

⁶More information is available on the Service Canada website at: <http://www.servicecanada.gc.ca/eng/ei/information/latest2009.shtml>

Social Policy, Federal-Provincial Relations and Fiscal Policy Branch, Department of Finance Canada explained, this might be seen as either a low percentage of workers or a relatively high number depending on one's perspective:

“The figure of 40 per cent is often quoted but it is misleading because it includes people who have never paid premiums to the EI program. For example, some people have never worked and are looking for a job for the first time. Others have not worked in the last year and, therefore, have not paid into the program. Some people have quit their jobs without just cause. Therefore, they are ineligible for EI. There are also people who are self-employed and have never paid into the EI program; they are not eligible. You have to pay into EI to be eligible for it”.⁷

He added that for “...those who pay EI premiums, over 80 per cent receive EI benefits. The 40 per cent figure includes many people who have never paid into the program and are obviously not eligible.”

Mr. Mark Hodgson Senior Policy Analyst, Labour Markets/Employment/Learning, Social Policy, Federal-Provincial Relations and Social Policy Branch, Department of Finance Canada echoed this argument when he stated that:

“There are two different numbers that are being reported: people who are unemployed who may or may not have paid EI premiums and people who are receiving EI benefits who did pay EI premiums. For a number of reasons, a person can be counted as unemployed and not paid EI premiums. They may not have worked recently; they may have been self-employed; they may be newly graduated from school. They are looking for work and are counted as unemployed, but they have not paid premiums so they have no entitlement to EI benefits.”

“Statistics Canada carries out the Employment Insurance Coverage Survey, which is a better measure of coverage of the program for those it is intended to cover. Of those who paid premiums and were either laid off or quit with just cause, 82 per cent were receiving benefits or eligible to receive benefits, and if memory serves accurately, that number has moved between 80 per cent and 84 per cent over the last four to five years. It has remained fairly steady and there is not a lot of variation between provincial numbers and the national average.”⁸

This answer did not quite satisfy Mr. Weir, economist, United Steel Workers, who felt that the EI system needs to be accessible to a greater number

⁷ Proceedings of the Standing Senate Committee on National Finance Issue 3 - Evidence - Meeting of March 10, 2009

⁸ Proceedings of the Standing Senate Committee on National Finance Issue 4 - Evidence - Meeting of March 25, 2009

of unemployed Canadians: “It is critically important for Employment Insurance to provide adequate benefits to these workers who are losing jobs through no fault of their own.”⁹ He saw a need for improvements beyond what was provided in Budget 2009, one of which addressed the need to provide EI coverage to a broader segment of the unemployed population:

“In terms of accessibility, the key flaw with the Employment Insurance system is that it fails to provide benefits to most unemployed workers. Only about 40 per cent of unemployed Canadians receive EI benefits.”

Other barriers to accessibility identified by Mr. Weir are the two week waiting period that must pass before a claimant can receive EI payments, and the requirement that workers must exhaust their severance pay before they can collect any benefits.

OBSERVATION 1

While the committee recognizes that not all unemployed workers who paid into the Employment Insurance program will qualify for benefits, it believes that the program could provide broader coverage. The committee also believes that a greater number of Canadians should have access to Employment Insurance coverage.

Therefore, the majority of the committee recommends that:

RECOMMENDATION 3

The government should take steps to increase the proportion of Canadians who could be covered by the Employment Insurance Program.

D. Entrance Requirements

Most people will need to have worked between 420 and 700 insurable hours in their qualifying period to qualify, depending on the unemployment rate in their region at the time of filing their claim for benefits. Regions with higher unemployment rates are associated with shorter qualifying periods. However, if the claimants are new entrants to the workforce, or if they are re-entering the workforce after more than a 2-year absence, they must have worked a minimum of 910 hours of insured employment.

⁹ Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

Other types of EI benefits may require a different entrance requirement, for instance, claimants require at least 600 insurable hours in order to qualify to receive maternity, parental, sickness or compassionate care benefits.

An important aspect of the entrance requirement is that it varies depending on the unemployment rate in the claimant's region at the time of filing their claim for benefits. The higher unemployment rates are associated with shorter qualifying periods. This requirement, especially during a recession seems to be unfair to the regions that require the claimant to have worked a higher number of insurable hours. The rationale for this arrangement is that a lower unemployment rate is thought to make it easier for the unemployed to find and retain alternative employment. If the unemployment rate in a region increases, then the EI system adapts and an adjustment is made to the number of insurable hours required to qualify in that region.

According to Mr. Hodgson this rationale is reasonable and tenable:

“There is evidence to support the effectiveness of the variable entrance requirement by looking at comparisons across provinces of the average proportion of benefit entitlement that is used by the claimant. There is not much variation across provinces indicating that in regions with lower unemployment rates and shorter benefit entitlements, people are using roughly the same proportion of that shorter benefit entitlement as claimants in higher unemployment regions who have longer benefit entitlements. It looks like it works reasonably well.”¹⁰

One individual, Mr. Jeremy Leonard, an economist, argued that there was a lost opportunity to bring in even greater reforms of the EI program, especially to its structural inequities such as the variable entrance requirements. In his view:

“The time was right to address some of the long standing structural inequities in the program, but the budget did virtually nothing in this regard.”

“The most glaring inequity is the fact that the number of hours required to qualify varies substantially across the country according to the local unemployment rate. As a result, in the current context the areas of the country hardest hit by the recession, which are to date Alberta and southern Ontario, are actually the places where it is hardest to qualify for benefits. This has reduced the proportion of unemployed workers who have received them. As of January 2009, less than 30 per cent of Albertans and Ontarians with no declared labour income were receiving

¹⁰ Proceedings of the Standing Senate Committee on National Finance Issue 4 - Evidence - Meeting of March 25, 2009

employment insurance benefits. This compares to over 70 per cent in the Maritimes, which thus far has been spared the worst of the recession.”¹¹

Mr. Leonard points out that such a situation constitutes an implicit regional subsidy, and that EI has strayed far from its core function of providing income maintenance for unforeseen spells of unemployment. If the country has an interest in maintaining regional development subsidies and supporting seasonal workers, then in his view the government should divorce this function from EI and make it more explicit so that the citizens know what is being spent and for what purpose.

According to Mr. Leonard, one way to move EI back to its core function and help get money into the pockets of those who need it most during economic downturns, is to incorporate a mechanism of experience rating into its structure. By this he means “that firms that lay off fewer workers should face a lower EI contribution tax rate on their payroll. Similarly, workers who make fewer and less frequent claims should receive greater EI benefits when they do claim them.” Such a mechanism brings the program closer to how private insurance is typically provided.

In Mr. Weir’s view, a major cause of the aforementioned reduced accessibility to the EI Program is the variable entrance requirement:

“One (impediment to accessibility) is that the hours required to qualify for the program vary depending on the region of the country in which a worker resides. In regions with relatively low unemployment, including Ottawa, fully 700 hours of work are required to qualify for any benefits. This regional variation does not make sense because workers, who lose their jobs, even if they happen to live in areas that have had lower rates of unemployment, are still out of a job and still in need of income support.”

He therefore proposed that the government should change the Employment Insurance system so that:

“Any worker who has at least 360 hours of work, anywhere in Canada, should qualify for Employment Insurance benefits without having to wait for two weeks and without having to first exhaust severance pay.”¹²

¹¹Proceedings of the Standing Senate Committee on National Finance - Evidence - Meeting of May 5, 2009

¹²Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

OBSERVATION 2

The committee recognizes that there are several aspects to the entrance requirements that may deserve modification in the long run. While the committee could not conduct a broad and in-depth analysis of the suitability of all the entrance requirements it does feel that the unusually difficult economic conditions make it desirable to address at least the interregional inequity.

For this reason the majority of the committee proposes an interim measure:

RECOMMENDATION 4

The federal government implement a temporary, two year: a) national standard for qualification to the Employment Insurance program, no greater than 420 hours of insurable employment, and b) the removal of the two-week waiting period that precedes the commencement of benefits.

i) Setting the Employment Insurance Premiums

In Part 4, Bill C-10 amends the *Employment Insurance Act* to freeze the Employment Insurance (EI) premium rate for 2010 at \$1.73 per \$100. This is the rate already set for both 2008 and 2009.¹³ At this rate, revenues from premium contributions are not expected to cover the cost of EI payments. However, this measure was supported by Mr. Weir:

“I emphasize that I think the Government of Canada did the right thing by freezing Employment Insurance premiums at current levels and indicating that it would financially back-stop that.”¹⁴

Mr. Benson, a lobbyist at Teamsters Canada echoed this sentiment when he said: “premium increases or benefit cuts are not sound policy during a recession.”¹⁵

The total expected net fiscal cost for the premium rate of \$1.73 per \$100 in 2009 and 2010 combined is \$4.5 billion. In 2011 and beyond, the Canada

¹³ The 2009 rate was set in the fall of 2008 by the Employment Insurance Commission at the same rate that prevailed in 2008.

¹⁴ Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

¹⁵ Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

Employment Insurance Financing Board (CEIFB)¹⁶ is expected to set the premium rate at the forecasted break-even level. Of course, as mentioned earlier this may be difficult given that annual increases are limited to 15 cents.

The 2009 federal budget stated that the CEIFB would be mandated not to recover the two-year deficit arising from these benefit enhancement measures. On August 1, 2010, the federal government is expected to credit the Employment Insurance Account with \$2.9 billion to cover the estimated cost of the benefit enhancement measures for 2009–2010 and 2010–2011. Any shortfall will be covered from the Consolidated Revenue Fund as EI payments constitute a statutory obligation of the federal government.

The CEIFB is intended to be a small Crown corporation established by the CEIFB Act that came into force on June 20, 2008. The Board has not yet been established. It would report to Parliament through the Minister of Human Resources and Social Development. The creation of the CEIFB is designed to improve the governance and management of the EI Account. Pursuant to the CEIFB Act and amendments to the *Employment Insurance Act*, the CEIFB will be responsible for:

- a) Implementing an improved EI premium rate-setting mechanism that will ensure that EI revenues and expenditures break even over time;
- b) Managing a separate bank account, where any excess EI revenues from a given year will be held and invested until they are used to reduce premium rates in subsequent years; and
- c) Maintaining a \$2 billion cash reserve as a contingency fund in order to support relative premium rate stability within legislated parameters.

To establish the reserve, the Government of Canada will transfer \$2 billion from existing resources in its Consolidated Revenue Fund. This has not yet occurred.¹⁷

To contribute to the relative stability of EI premium rates, the Board will be limited in the extent to which it can change the rate by a maximum of 15 cents per year.

Human Resources and Social Development Canada will continue to have responsibility for EI benefits and, through Service Canada, for program delivery

¹⁶ More information is available on the web at: <http://www.hrsdc.gc.ca/eng/employment/ei/ceifb/index.shtml>

¹⁷ Mr. Hodgson in Proceedings of the Standing Senate Committee on National Finance Issue 4 - Evidence - Meeting of March 25, 2009

to ensure that the EI program remains responsive to the needs of Canadians and that it is delivered efficiently and effectively.

These changes are intended to:

- a) Ensure independent decision-making regarding the management of EI funds and that these funds are only used to pay for EI expenditures;
- b) Ensure that premium rates reflect actual program costs and take into account investment returns so that Canadians pay the right premium rates - just sufficient to cover the cost of benefits received; and
- c) Place the program on firm financial footing going forward.

According to correspondence received from the Department of Finance, the administration costs of the program, taken from the Public Accounts of Canada for 2007-08 and 2006-07, in millions of dollars are \$1,539 for 2007-08; \$1,528 for 2006-07; and \$1,486 for 2005-06.

According to Mr. Hodgson¹⁸, the setting of the premium rate at \$1.73 over those two years will mean that the program will experience a shortfall of \$4.5 billion. This will be \$2.9 billion in 2010 and a total of \$4.5 billion over the two years. The Act therefore provides for a repayment to the EI program of \$2.9 billion to cover this shortfall of benefits over premium revenues.

There was some confusion over this “\$2.9 billion” value because it occurs for two separate expenditures. First, it refers to the stipulated reimbursement to the EI program because fees are frozen for 2010. An identical amount is estimated for the costs of the other EI enhancements. As Mr. Hodgson explained, this is because it:

“relates to the estimated cost of the benefit enhancements introduced in Budget 2009, which will not be recovered through premium rates. Unfortunately, it is an identical number, but \$2.9 billion is the estimated cost of other programs such as the long-tenured workers initiative and the extended work sharing agreements. All these other things total \$2.9 billion.”¹⁹

Also there was some concern that because the CEIFB is not yet established a risk might exist that some unemployed person would not receive their benefit payments. Mr. Hodgson reassured the committee that all persons entitled to receive an EI benefit would receive it because the payment of benefits is a

¹⁸ Proceedings of the Standing Senate Committee on National Finance Issue 4 - Evidence - Meeting of March 25, 2009

¹⁹ Ibid.

statutory expenditure and funds would come from the Consolidated Revenue Fund to cover any shortfall in premium revenues.

There were other concerns about the CEIFB besides the fact that it is not yet in operation. Some witnesses wondered if the Board, as structured, would be able to fulfill its mandate of bringing stability to the level of EI premiums. Mr. Weir's concerns about the financing regime for Employment Insurance go back to the introduction of the Board in the *Budget Implementation Act, 2008*:

“Specifically, I suggested that the reserve fund of \$2 billion was inadequate and that if unemployment increased in Canada either the financing board would have to hike premiums or the government would have to inject additional funds into Employment Insurance. Budget 2009 reveals that those concerns were valid. It allocates a further \$4.5 billion to Employment Insurance in order to freeze premiums at current levels.”²⁰

He added:

“I believe that questions concerning the financing of Employment Insurance remain serious. One of those questions is: What is the purpose of having an independent board to set premiums at a time when government has frozen those premiums for a period of two years.”

Mr. Michel Bédard, Member, Task Force on the Financing of Employment Insurance, Canadian Institute of Actuaries also voiced his concerns regarding the financing arrangements of the CEIFB. He noted that the government's plan to create the Canada Employment Insurance Financing Board has several flaws, mainly because: “it allowed the new board to base premium rates looking forward only one year, estimating costs and revenues for the next year only, without any real reserve.”²¹

Mr. Bédard confirmed that he still thinks that the creation of the Canada Employment Insurance Financing Board was, and is, a good idea. However, both he and the Institute of Actuaries insist that the mandate given to the CEIFB had “significant flaws in estimating premiums and costs on a single-year basis and without providing any real reserve.” In his view, “Such an approach could only lead to erratic changes in EI premium rates and, even worse, to increases at times of recession, the first of which would have been required in 2010.”

According to the Institute's estimates presented to the committee, a strengthened CEIFB, operating at arm's-length, with a mandate to stabilize EI premiums would require a stabilization fund of between \$10 billion to \$15 billion.

²⁰ Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

²¹ Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

OBSERVATION 3

The majority of the committee agrees with several witnesses, including the Canadian Institute of Actuaries, who expressed concern that the \$2 billion Employment Insurance fund reserve is woefully inadequate. A larger reserve in the range of \$10 billion to \$15 billion is needed, both to permit the Financing Board to avoid dramatic fluctuations in premium rates, and to ensure that the fund will be adequate to cover a sharp rise in benefit payments during any future economic downturn.

In light of these comments by the witnesses, the majority of the committee recommends that:

RECOMMENDATION 5

The government should re-assess the planned structure of the CEIFB and increase the size of the stabilization fund to a level considered adequate by actuarial standards.

ii) The Timely Delivery of Benefit Payments

Although Mr. Louis Beauséjour, Director General, Employment Insurance Policy, Skills and Employment Branch, Human Resources and Skills Development Canada acknowledged that delays have occurred in the delivery of benefits payments, he informed the committee that the period is monitored on a weekly basis by Service Canada and that he was not aware of all their processes.

He did reveal that Service Canada has a target of getting cheques to 80 per cent of the claimants within 28 days after their claim is completed. He felt that it was important to emphasise that measuring delay begins on the day that a claim is complete. The organization tries to have 80 per cent of the first payment out in that time on an annual basis. An annual average is selected because “there is an annual, standard peak load in December and January.” During these months, the organization cannot meet the target.

Although the committee recognizes that the government has taken steps to improve the delivery of EI benefits, the majority of the committee recommends that:

RECOMMENDATION 6

The government needs to set firmer delivery standards in order to ensure that Canadians receive their Employment Insurance benefits in a timely fashion.

iii) Employment Insurance and Women Claimants

Some senators were concerned about the ability of women to access EI benefits to the same extent as their male counterparts. It seems that eligibility requirements do not meet the particular employment characteristics of women. The committee wanted to know if this resulted in women receiving lower levels of benefit payments. Mr. Beauséjour was not able to provide exact data, but did acknowledge that in regards to regular benefits it might be lower. He also noted that within the class of special benefits, women received more benefits than men, and "...in total, they did receive a larger proportion of what they contributed to EI when you take all the benefits."²²

In Mr. Benson's view, it is clear from the statistics that "if you are working in retail or in a particular field where you are trying to balance home life and other things, taking part-time work, you can never actually qualify for Employment Insurance."²³ A uniform entrance requirement as discussed earlier in this report, would benefit such part-time and casual employees who are disproportionately represented by female workers. A variable benefit rate could also be considered to better protect low income earners and single parents, who are predominantly women. The committee was frustrated by the general lack of data on the experience of women who pay into the EI program. On the other hand, the committee believes that action is still warranted and recommends that:

RECOMMENDATION 7

The federal government is urged to examine women's access to employment insurance and to ensure that the program closes the gender gap in employment insurance accessibility.

E. Other Changes to the EI Program

In the 2009 federal budget, the government announced a number of other changes to the EI program:

²² Proceedings of the Standing Senate Committee on National Finance Issue 4 - Evidence - Meeting of March 25, 2009

²³ Proceedings of the Standing Senate Committee on National Finance Issue 5 - Evidence - Meeting of April 1, 2009

- More financial support for up to 10,000 unemployed long-tenured workers who are gaining new skills and taking work training;
- Increased support for other EI training programs;
- Extended work-sharing benefits for all recipients; and
- Extended benefits under the Wage Earner Protection Program to cover severance and termination pay for four weeks from a non-paying employer.

Mr. Beauséjour explained that the strategy adopted by the government “aims to assist Canadians through a three-pronged approach that includes:

- a) strengthening benefits for Canadian workers;
- b) enhancing the availability of training; and
- c) keeping Employment Insurance premium rates frozen.”²⁴

He explained that “One part of Canada's Economic Action Plan is aimed at strengthening benefits for Canadian workers. Other improvements to the EI program include providing an estimated \$500 million over two years to extend income benefits for long-tenured workers participating in longer-term training. Another improvement allows earlier access to EI regular income benefit for eligible individuals investing in their own training using all or part of their severance package.”

Furthermore, he stated that “The Canada Skills and Transition Strategy also seeks to enhance the availability of training for Canadian workers through increased funding of \$1 billion over two years for training delivered by provinces and territories, and through labour market development agreements, funded by the EI program.”

With respect to the additional financial support for up to 10,000 unemployed long-tenured workers who are gaining new skills and taking work training, the committee is unconvinced that this measure provides a sufficient level of assistance to satisfy the needs of the labour force in this period of economic crisis. However, the committee could not during its hearings establish conclusively the level of support that might be required because of a lack of information on past experience for such programs. Part of the data problem arises because the initiative is implemented by the provinces with federal funding. Therefore, the committee would recommend that:

²⁴ Proceedings of the Standing Senate Committee on National Finance Issue 4 - Evidence - Meeting of March 25, 2009

RECOMMENDATION 8

The federal government should initiate measures that will permit the gathering of information on EI training programs that will allow a full assessment of the adequacy of these programs.

IV. OBSERVATIONS ON PART 5: EXTRAORDINARY FINANCING FRAMEWORK

... The problem is mainly due to the fact that Canadian banks represented only half of the commercial funding provided to Canadian companies. Several foreign firms used to provide non-traditional funding or insurance coverage. It is not a given bank or Canadian banks in general that have restricted access to credit. This phenomenon is partly due to the fact that foreign banks and financial firms have withdrawn from our market...

Jean-Michel Laurin, Vice President, Global Business Policy, Canadian Manufacturers and Exporters

This excerpt from the testimony of Jean-Michel Laurin before the Standing Senate Committee on National Finance, on April 21, 2009, clearly summarizes the economic circumstances that led to the establishment of the Extraordinary Financing Framework (EFF) in Budget 2009. This plan is designed to facilitate access to credit for consumers and Canadian businesses by temporarily filling the gap left by the withdrawal of foreign financial institutions. The EFF could reach up to \$200 billion.

This \$200 billion of the Extraordinary Financing Framework is made up of various components. Roughly, this is as follows:

1. \$125 billion for the Insured Mortgage Purchase Program;
2. \$12 billion for the Canadian Secured Credit Facility;
3. \$13 billion through additional credit provisions by the financial Crown corporations EDC and BDC;
4. \$40 billion through modernized authorities²⁵ of the Bank of Canada to support liquidity of the financial system; and
5. \$10 billion through the new 10 year Canada Mortgage Bond launched in the fall of 2008

²⁵ Budget 2008 announced that the government would modernize the authorities of the Bank of Canada to support the stability of the financial system. The proposed changes were introduced in Bill C-50 An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget which received Royal Assent on June 18, 2008.

The *Budget Implementation Act, 2009* (BIA), under consideration establishes certain measures included in the EFF, including measures affecting Export Development Canada (EDC), the Business Development Bank of Canada (BDC) and the *Canada Small Business Financing Act*. This section describes the elements of Bill C-10 that pertains to them and the nature of the committee's discussions in their regard.

A. Export Development Canada and the Business Development Bank of Canada

Export Development Canada will play an important role in improving access to credit under the EFF. In support of that role, the *Budget Implementation Act, 2009*, establishes the following measures, in Part 5, Division 3:

1. EDC's mandate is expanded to allow it to support financing activities in the domestic market, including insurance for client accounts. The mandate is for two years, but may be extended by order of the Governor in Council;
2. The authorized capital for EDC is increased by \$1.5 billion, to allow the institution to make more loans to businesses;
3. The Corporation's contingent liabilities are increased from \$30 billion to \$45 billion, which will allow the institution to increase the insurance and guarantees it provides;
4. The Canada Account²⁶ limit is increased from \$13 billion to \$20 billion;
5. EDC will participate, with BDC and private financial institutions, in the Business Credit Availability Program, which will provide at least \$5 billion in additional loans and other support and improved funding measures, at market rates, to enterprises with viable operational models and limited access to credit.

B. Business Development Bank of Canada

Under the *Budget Implementation Act, 2009*, BDC's authorized capital was increased by \$1.5 billion, allowing it to increase the funding it provides to small and medium-sized businesses, its target clients. This measure is set out in Part 5, Division 4, of the BIA. Under the EFF, BDC is responsible for managing the Canadian Secured Credit Facility, with funding up to \$12 billion. Under this

²⁶ The Canada Account is used to support export transactions which EDC is unable to support, but which are determined by the Minister for International Trade to be in Canada's national interest. This is usually due to a combination of risks, which can include the size of the transaction, market risks, EDC's country capacity, borrower risks, and/or the financing conditions.

program, BDC will purchase asset-backed securities (ABS) for loans on vehicles and equipment. Little information is available at present on the implementation of this program. As of April 20, 2009, no expenditures had been made. Finally, BDC participates, with EDC and private financial institutions, in the Business Credit Availability Program.

C. *Canada Small Business Financing Act*

Division 5 of the *Budget Implementation Act, 2009*, amends the *Canada Small Business Financing Act* in two ways. First, it increases from \$250,000 to \$500,000 the maximum loan that can be made to a small business under the Canada Small Business financing Program, no more than \$350,000 of which may be used for leasehold improvements, the improvement of rental property and the purchase or improvement of new or used equipment. Secondly, it increases the maximum losses that can be paid to a lender, which should encourage financial institutions to give more loans to small businesses.

i) *Authorized capital for EDC and BDC*

One of the issues raised during the committee's discussions of the EFF was the increase in authorized capital for EDC and BDC. As Eric Siegel²⁷, President and Chief Executive Officer, Export Development Canada, and Lise Carrière, Chief, International Finance, International Trade and Finance, Finance Canada,²⁸ stated, an increase in the authorized capital does not represent new funding for these corporations but rather an authorization granted for the federal government to inject new capital into these corporations at a later date, if necessary, without approval from the Parliament of Canada. The increase in authorized capital was necessary to allow the two corporations, which like major financial institutions have a capital adequacy policy, to quickly increase their commercial activities in an economic climate of tight credit.

The distinction between the capital paid out and authorized capital is important since it means that monies from the consolidated revenue fund can still be accessed by these two corporations without any obligation to inform Parliament through the Estimates, the venue which supports Parliamentary scrutiny of government spending. Mr. Siegel told the committee that, in January 2009, the federal government provided close to \$350 million of new capital for EDC.²⁹ However, this funding was not included in the Main Estimates or the

²⁷ Proceedings of the Standing Senate Committee on National Finance, Issue 6 – Evidence – Meeting of April 21, 2009.

²⁸ Proceedings of the Standing Senate Committee on National Finance, Issue 5 – Evidence – Meeting of March 31, 2009.

²⁹ According to the economic and financial statement of November 27, 2008, BDC would have received a similar amount.

Supplementary Estimates referred to the committee because payments made under existing authorizations are included for information purposes only. There is no requirement that the various departments refer to these expenditures, although the Treasury Board, in the interest of transparency, strongly encourages departments to do so.

The *Budget Implementation Act, 2009*, includes a number of spending authorizations to make payments in the future without departments having to provide additional information to Parliament. While not exhaustive, the following is a list of the most important of these authorizations:

- Section 223 provides that, as of August 1, 2010, an amount currently *estimated* at \$2.9 billion will be credited to the Employment Insurance Account; the actual amount paid out will not be known until later;
- Section 232 authorizes drawing on public money for any amount required to honour contracts deemed necessary to maintain the stability and effectiveness of the financial system in Canada;
- Section 261 increases the authorized capital of EDC by \$1.5 billion;
- Section 264 increases the authorized capital of BDC by \$1.5 billion;
- Section 266 increases the Minister's maximum liability under the *Canada Small Business Financing Act*;
- Sections 275, 279, 287 and 292 authorize drawing on public money for any amount necessary to purchase shares from financial institutions;
- Section 295 authorizes payment not exceeding \$150 million to the provinces and territories for matters relating to the establishment of a Canadian securities regulation regime;
- The enactment of the *Canadian Securities Regulation Regime Transition Office Act* (section 297) authorizes payment not exceeding \$33 million to the Transition Office, for its use;
- Sections 300 to 316 provide for the payment of a total of \$5.973 billion for the various infrastructure measures contained in Budget 2009;
- Section 392 authorizes payment not exceeding \$74.2 million to Nova Scotia.

The payments under the infrastructure program must be made during fiscal year 2009-2010. The other statutory payments, in particular those pertaining to the authorized capital of EDC and BDC, must be made over a number of years.

ii) Business Credit Availability Program

To offset the shortage of credit resulting from the withdrawal of certain financial institutions from the Canadian market, the government has temporarily expanded EDC's mandate to allow the corporation to support financing activities in the domestic market. The domestic market responded favourably to the expansion of EDC's mandate. Appearing before the committee on April 22, 2009, Avrim Lazar, President and CEO, Forest Products Association of Canada, stated for instance:

“There has been a meltdown in financial systems. The government did, we think, the right thing in stepping in and trying to offset that meltdown, but it will never be enough because the government cannot replace the market. That being said, we like the attitude. We like what was announced. We think Export Development Canada has stepped up in a way that is quite admirable. They have extended their mandate, they have gotten braver and we will not criticize that.”

Similarly, Jean-Michel Laurin, Vice President, Global Business Policy, Canadian Manufacturers and Exporters, told the committee on April 21 that:

“... Our members are more interested in the results. Quite frankly, the provider of the financing is a secondary consideration. Ensuring the money is available is the first priority. Most exporters already have a relationship with EDC because of the financial products it provides. If you are looking at delivering something through EDC, it makes sense for the majority of exporters because they already have a business relationship with EDC.”

“... In conclusion, it was important to ensure going forward that the budget was passed quickly so that the measures announced in the budget to deal with the financing situation would rapidly come into force. We have been in constant discussions with EDC, BDC and the Department of Finance, not only to ensure the measures are put into place quickly, but also to ensure they respond to business needs. The level of dialogue has been excellent.”

“... It is important EDC intervene in the domestic market right now because there is a market failure. There is a need for additional capacity, which is what EDC is trying to do for the next three years.”

Given the temporary nature of the expanded mandate for EDC, it will work alongside BDC in the domestic market for business financing. EDC, BDC and the private sector will coordinate their activities through enhanced cooperation, made operational by the Business Credit Availability Program (BCAP), through which EDC and BDC are expected to provide at least \$5 billion in additional loans to Canadian businesses, in accordance with market conditions. Based on the

evidence heard by the committee, this cooperation is informal. Appearing before the committee, Mr. Siegel stated:

“EDC's participation in the Business Credit Availability Program, or BCAP, is one way we are increasing cooperation with commercial financial institutions. Through regular meetings of this committee, EDC, BDC — the Business Development Bank of Canada — and representatives of Canada's major banks will be able to consult, collaborate, discuss potential areas where gaps are present and add capacity to the market ...”

“...There has always been a side-by-side relationship between EDC and BDC, particularly in relation to small and medium-size enterprises, SMEs. EDC has less restriction in its ability to offer programs domestically. We are still working alongside BDC. That is the value of BCAP, which brings together executives from the two Crown corporations — EDC and BDC — as well as all the major financial institutions. Our goals are to achieve clarity of what we can do; to identify any potential impediments that may exist between ourselves and the banks; to allow the bilateral relationships that exist already between the Crown corporations and the financial institutions to flow; and to bring more concerted measurement to the amount of credit being created through the combined efforts of all those players.”³⁰

For her part, Erin O'Brien, Chief, Microeconomic Policy Analysis, Policy Analysis and Coordination, Economic Development and Corporate Finance, Finance Canada, stated:

“You had posed a question in terms of cooperation between the Business Development Bank of Canada and Export Development Canada. Under the BCAP facility, an advisory steering committee is combined of private sector financial institutions as well as these two financial Crown corporations. The steering committee provides a forum through which a number of policy and business issues are being discussed.

As well, specifically between BDC and EDC, they are negotiating a memorandum of understanding to ensure no overlap or competition exists between the financial Crown corporations.”³¹

The informality of this cooperation was highlighted by information provided by Finance Canada officials on March 31, 2009, who indicated that EDC had already started to address the gaps in the domestic market even before the memorandum of understanding between BDC and EDC was finalized. This was

³⁰ Proceedings of the Standing Senate Committee on National Finance, Issue 6 – Evidence – Meeting of April 21, 2009.

³¹ Proceedings of the Standing Senate Committee on National Finance, Issue 5 – Evidence – Meeting of March 31, 2009.

the case with large loans that the banks cannot provide and for which BDC cannot provide financial support. In addition, Mr. Siegel told the committee that BDC was not to be systematically involved in all domestic transactions involving EDC.

iii) Canadian Secured Credit Facility

The Canadian Secured Credit Facility (CSCF) was announced in Budget 2009. It has funding of up to \$12 billion and its objective is to purchase Asset-Backed Securities (ABS) for loans on vehicles and equipment. The Business Development Bank of Canada is responsible for managing it. According to Budget 2009, only federally regulated financial institutions may benefit from the facility. Yet federally regulated financial institutions cannot engage in financial leases for personal vehicles and personal property. To allow a company specializing in financial leases to participate in the CSCF and become a federally regulated enterprise, Part 5, Division 6, introduces an amendment to the *Trust and Loan Companies Act* allowing an enterprise offering financial leases on motor vehicles and equipment to become a federally regulated loan corporation, while continuing to offer the same financial leases. The general operation of the CSCF was explained by Cliff Lee-Sing, Chief, Reserves and Risk Management Section, Financial Sector Policy Branch, Finance Canada: ³²

“... The \$12-billion program will be run by BDC initially. It will provide money to federally regulated financial institutions that sponsor what is known as asset-backed securities, ABS. These are securities backed by bundles of loans and leases provided by car dealers, dealers, equipment dealers, who sell these securities to a bank, and the bank sponsors the ABS. Therefore, anyone who wishes to be a sponsor could get access to this facility.”

The exact mechanisms of the credit facility are still being worked out.

³² Proceedings of the Standing Senate Committee on National Finance, Issue 5 – Evidence – Meeting of March 31, 2009.

V. OBSERVATIONS ON PART 10: THE EXPENDITURE RESTRAINT ACT

The Expenditure Restraint Act applies to unionized and non-unionized employees in the federal public administration, in its broadest sense. This includes the core public service, separate agencies, some Crown corporations funded by parliamentary votes, the Senate, the House of Commons, Governor in Council appointees, the RCMP and the Canadian Forces. Broadly speaking, the Act imposes a five-year ceiling on pay increases – the next two and the last three, including the current year – but only for a limited number of individuals.

Hélène Laurendeau, Assistant Secretary
Labour Relations and Compensation
Operations, Treasury Board of Canada

This was how Hélène Laurendeau described the *Expenditure Restraint Act* (ERA), introduced as part of the *Budget Implementation Act, 2009* when she appeared before the committee on March 11, 2009. The purpose of the ERA is to ensure predictability in payroll increases for the federal government as a whole. The new Act limits the increase in the rate of pay for federal public servants to 2.5% in 2006-2007, 2.3% in 2007-2008, and 1.5% in each of 2008–2009, 2009–2010 and 2010–2011. In relation to the ERA, the committee’s deliberations focused on two main themes: the impact of the Act on reform of the employee classification system, and on public service renewal.

A. The *Expenditure Restraint Act* and reform of the employee classification system

Some senators wondered about the effect of the ERA on the reform of the classification system that the federal government has been pursuing for a number of years. Some senators, in particular, had questions about the establishment of new pay scales to match new position descriptions. As Ms Laurendeau put it:

“Are you referring to classification reform? As far as the direct impact of the bill is concerned, the overall classification reform exercise would not be affected, except with respect to exceptions that have been included that give operational effect to the classification reforms already under way.”³³

As to whether the ERA places a limit on pay increases that might be approved within the framework of the classification reform process, Ms Laurendeau stated:

³³ Proceedings of the Standing Senate Committee on National Finance, Issue 3 – Evidence – Meeting of March 11, 2009.

“For the period until 2010-2011 salary increases are frozen but it does not prevent any classification work during the control period.”

In his testimony to the committee on May 6, 2009, Claude Poirier, President of the Canadian Association of Professional Employees (CAPE), disagreed with Ms Laurendeau:

“We are not here this evening to contest the increases imposed in the *Expenditure Restraint Act*. There is in fact no doubt that our members voted under pressure to accept Treasury Board’s final offer. We are here, rather, to denounce a flagrant injustice contained in the legislation in question. This Act prevents CAPE from negotiating pay scales for the conversion of its members’ classification to the EC group, next June 22... For its members, CAPE was ready to negotiate the agreement at the end of last summer. Our pay proposal was very similar to the government's final offer, but the negotiator had no mandate for the conversion ... Contrary to what Hélène Laurendeau told this committee, Treasury board made every effort to avoid a return to the bargaining table. Yet the conversion was virtually the only thing left to negotiate, and Ms Laurendeau says that the door was open, which was not the case. If we had been able to negotiate, we would not be here this evening.”³⁴

CAPE’s grievance thus arises from the ERA’s ban on changes in the pay structure to reflect the new EC classification for employees it represents. Hence, Mr. Poirier expressly asked the committee for

“... one very simple step: legislation requiring CAPE and Treasury Board to go back to the table to bargain pay scales corresponding to the new classification standard. These negotiations would not be subject to the ban on pay restructuring. Naturally, this opportunity would not apply to the annual adjustments set out in the Act, which our members have already accepted. This should all be done out of concern for justice, to prevent our members from believing that the legislator can use the law to escape its responsibilities.”

According to CAPE, it is very difficult to understand why the federal government, having got the classification reform process under way, spent more than 10 years working on it and spent huge sums of money for the purpose, should stop at the point where the establishment of the new pay scales had to be negotiated. Some senators expressed definite sympathy for CAPE’s position.

³⁴ Proceedings of the Standing Senate Committee on National Finance, Issue 7 – Evidence – Meeting of May 6, 2009.

VI. OSERVATIONS ON PART 6: INFRASTRUCTURE AND HOUSING PAYMENTS

Infrastructure spending represents an essential component of Canada's economic action plan. Part 6 of Bill C-10 provides the authority to spend over \$3 billion on all infrastructure initiatives of the government of Canada. These initiatives and their associated amounts are:

- \$2.0 billion on the Infrastructure Stimulus Fund
- \$495 million on accelerated payments under the Provincial-Territorial Base Funding Initiative
- \$295 million on the communities component of the Building Canada Fund
- \$200 million on the Green Infrastructure Fund
- \$503 million on the Community Adjustment Funds
- \$1.0 billion on improving infrastructure at universities and colleges
- \$200 million on First Nations housing
- \$500 million on Renovation and Retrofit of social Housing
- \$200 million on housing for low-income seniors
- \$25 million on housing for persons with disabilities
- \$100 million for social housing in Territories
- \$500 million for Canada Health Infoway Inc.

Given the importance of these initiatives, the committee held numerous meetings where senators had occasion to discuss, in depth, infrastructure spending. On March 24, 2009, the committee welcomed Karen Kinsley, President and Chief Executive Officer and Michel Tremblay, Chief Financial Officer of the Canada Mortgage and Housing Corporation. On April 1, 2009, Erin Weir, Economist, United Steelworkers and Phil Benson, Lobbyist, Teamsters Canada, presented the opinion of their respective union to the committee. On April 21, 2009, Stéphane Lambert, Chief, Sectoral Policy Analysis, Transport & Corporate Analysis, Economic Development & Corporate Finance and Erin O'Brien, Chief, Microeconomic Policy Analysis, Policy Analysis and Coordination, Economic Development & Corporate Finance, both from the Department of Finance, came to discuss part 6 of the first *Budget Implementation Act, 2009*. Finally, on April 28, 2009, James Knight, President and CEO and Terry Anne Boyles, Vice President, Public Affairs from the Association of Canadian Community Colleges as well as Claire Morris, President and CEO and André Dulude, Vice President, National Affairs, from the Association of Universities and Colleges of Canada, presented their observations to the honourable senators.

The general sense of these discussions was that the infrastructure spending by the government of Canada is a very welcome measure. For example, in her testimony in front of the committee, Ms. Claire Morris stated that:

“The impact of this funding is multiplied by the government's requirement of matching funding from the provincial governments, the private sector or universities themselves. It is anticipated that in the next two years at least \$4 billion will be spent in communities across Canada restoring existing and building new post-secondary infrastructure. An investment of this magnitude will go a long way toward addressing the infrastructure backlog at Canadian universities.

Budget 2009's commitment of \$150 million to existing Canada Foundation for Innovation competitions, as well as \$600 million for future competitions, will continue to build a strong cutting-edge infrastructure backbone for the university research enterprise. A further \$87.5 million for a three-year expansion of Canada Graduate Scholarships and \$3.5 million for internships in science and business were also announced, underlining the importance of investments in highly skilled people.

These are investments that will assist the country in attaining both its short-term and its longer-term economic and social objectives. In the short term, they will provide much-needed economic stimulus; in the longer term, they are investments that will help Canada create and maintain its knowledge and people advantages, as outlined in the government's science and technology strategy.”

For his part, Mr. Benson stated that:

“I remember during the discussions around the budget, there was a great to-do about where projects were. I will pick on Mr. Abbott's riding and Revelstoke. There were complaints about it. All that part of the Pacific Gateway is critical to our membership — air, rail and ports. We supported that project and did not know why there was such a kerfuffle. To be blunt, some of the border crossing issues they were talking about, such as the Blue Water Bridge and getting the Windsor Bridge and tunnel going — and whatever else we can get — was good news.

There are two types of infrastructure coming out of that industry. People talk about “shovel ready” and pot holes and they are great for creating jobs today and they are needed. However, some of the other infrastructure projects they are talking about through the Revelstoke pass and the Pacific Gateway are needed investments that will mean jobs today, tomorrow and in the future. People do not understand and would be shocked to find out that 70 per cent to 80 per cent of trade of Canada-America crosses the Ambassador Bridge, which is Teamsters Canada, by the way.

That is the point: People do not understand that quite often these projects can pay dividends along the line. One of the big issues for the auto sector, of course, is how do we get the parts around? Every delay at the border is the potential of losing a plant in Ontario. We fight with the

provincial government over some of the things they are trying to do because they do not understand the implications they could have on our manufacturing sector. We are addressing it from transportation; we are not in that sector at all. Some of these things – the long-run projects – are exciting and will pay dividends in the future.”

A concern of some senators, considering the severe economic slowdown experienced worldwide, was the speed at which this money could flow. From the testimony of the officials from the Department of Finance, the committee learnt that Treasury Board had already approved the program parameters for the Infrastructure Stimulus Fund, the accelerated payments under the Provincial-Territorial Base Funding Initiative, the communities component of the Building Canada Fund and the Green Infrastructure Fund. Nevertheless, negotiations with provinces and territories were still ongoing at the time of the officials’ testimony in front of the committee and no money could flow until agreements had been reached between the federal government and its provincial and territorial counterparts. When asked about the anticipated time for the conclusion of negotiations, Mr. Lambert stated that the information about the timing or finalizing of these agreements would be made available with the June report of the Economic Action Plan.

Another aspect of the many infrastructure initiatives which concerned some senators is the requirement that in several instances, provinces, municipalities and educational institutions have to match the funds put forward by the federal government. The testimony of various witnesses indicates that provinces and institutions expressed their willingness and capacity to match the funds. In addition, the Government of Canada made available \$2 billion in low-cost loans to help Canadian municipalities to finance their share of infrastructure spending. As this money is made available through the Canada Mortgage and Housing Corporation (CMHC), the committee had a chance to discuss it with Ms. Kinsley.

In particular, some senators were interested in knowing the parameters of the program, specifically the conditions for participation, the type of infrastructure allowed, the applicable interest rate, the repayment schedule and the date the program will take effect. At the time of Ms. Kinsley’s appearance, the details regarding interest rates and repayment terms were still being worked out.³⁵ However, she did mention that the program would begin in April and that the loans had to be used to build housing related infrastructure. In relation to conditions for participation in the program, Ms. Kinsley stated that

“We will require a municipality to come forward and indicate that they have all the appropriate approvals needed for whatever project they propose. This includes environmental assessment, which would be

³⁵ For information purposes, the program was officially launched on April 19, 2009.

required because we are the lender on this project. It is incumbent on the municipality to do all the things required to ensure approval, including compliance with the environmental processes.”

Finally, some senators asked how long these funds would be made available to municipalities, as they were concerned that municipalities would not have enough time to come up with projects and complete them. Ms. Kinsley indicated to the committee that the loans had to be advanced within a two-year window. Information now available on CMHC’s website indicates that all loans have to be advanced by March 31, 2011, and that all work has to be completed by March 31, 2012. Where work has not been completed within this timeframe, the portion of the loan related to the incomplete work may become due and payable.

VII. CONCLUDING COMMENTS

Apart from the concerns and recommendations discussed above, there are two general matters that your committee wishes to raise. The first involves the long standing use by governments of the phrase “The *Statutory Instruments Act* does not apply in respect of the order.” This phrase, which occurs on 15 occasions³⁶ in Bill C-10, has the effect of removing from Parliament the right to examine and study those new regulations or rules put forth by many of the Acts included in this omnibus bill. It does not allow parliamentarians an opportunity to assess the impact of such measures on government spending and on the citizenry.

OBSERVATION 4

Your committee believes that an effort needs to be made to clarify the appropriate instances when this practice could be used before it further undermines the work of Parliament.

A second concern involves the increasing reliance by governments on the use of “omnibus bills” to bring forth budget implementation bills. This is a practice to which several senators have been opposed in the past. As recently as March 5, 2009 in the debate at second reading of Bill C-10, the Honourable Senator Lowell Murray expressed his dissatisfaction by noting:

“Honourable senators, as I said, the amendments to the *Navigable Waters Protection Act*, the *Competition Act* and the *Investment Canada Act* do not belong in the budget implementation bill, nor does the proposed new *Public Sector Equitable Compensation Act*. Those measures are even more conspicuously out of place in this particular budget implementation bill, focused as it properly is on immediate economic stimulus and recovery.”

He added further:

“The amendments to the *Navigable Waters Protection Act*, the *Competition Act*, the *Investment Act* and the proposed new *Public Sector Equitable Compensation Act* are far-reaching. In some cases, there are fundamental changes; in a few cases, there are historic changes. Most important, there are strongly held differences of opinion on these issues among those Canadians who are most knowledgeable, most concerned and most directly affected by these proposals.

In the interests of sound public policy and, indeed, in the interests of the democratic values we espouse, we have a duty to hear them. Their

³⁶ A list identifying the areas in the Royal Assent version of Bill C-10 is appended to this report.

concerns about adverse legislation should not be brushed aside by sneak attack, which is what happens when extraneous measures are forced through in an omnibus budget implementation bill.”

During the same debate, the Honourable Senator Yoine Goldstein said:

“Virtually everyone on this side of the chamber agrees that a budget bill should not have add-ons of this nature. These add-ons deprive Canadians of their right — and it is a right — to have legislation properly debated by both their elected representatives and the senators who represent regional interests.

We are faced with the following very real problem: We have an economy in shambles. If we amend, we have been told that when the bill gets back to the House of Commons and is agreed to, the amendment would be a matter of confidence. The result would either be a new government or an election. In either event, Canadians, who are bleeding desperately, will not have the stimulus package that they need. Therefore, we have a Hobson's choice with which to deal.”

On March 12, 2009, during the debate on third reading of Bill C-10, the Honourable Senator Goldstein made the following statement:

“Honourable senators, I had not intended to rise to speak to this issue, and I do so only because I want to emphasize that the issue today is not so much the budget as it is whether the Canadian people are or are not entitled to a parliamentary process. What is happening is not that a budget or a stimulus bill is being passed because, indeed, it will be passed. What is happening is we will be encouraging this government to tread on the absolute democratic rights of Canadians to have all legislation heard, considered, vetted and given the appropriate thought. Canadians have a right to demand this of us.”

Your committee has in the past complained of the inclusion of non-budgetary measures in budget implementation bills. Only a year ago, your committee did append the following observation to its report on Bill C-50, An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008, and to enact provisions to preserve the fiscal plan set out in that budget. That observation read as follows:

“The majority of the committee strongly objects to the practice of including legislative measures that have no direct relationship to budgetary matters in budget implementation bills. This practice has the effect of discouraging serious parliamentary scrutiny, and creates a situation in which parliamentarians are loath to conduct a proper examination of non budgetary measures for fear of delaying budgetary items that are more pressing. In the present bill, the government has, as did previous governments, included a large number of amendments to

Acts of Parliament that are not related to fiscal management or economic policy.”

Nor was this the first occasion for senators to express their dissatisfaction with the use of an omnibus bill to introduce budget measures. On June 20, 2005, during the debate at second reading of Bill C-43, An Act to implement certain provisions of the budget tabled in Parliament on February 23, 2005, the Honourable Senator Donald H. Oliver said:

“Honourable senators, we have before us a massive omnibus bill of some 23 separate parts. Bill C-43 ought to have come before us in at least three or more separate bills, one to deal with the budget measures per se, one to implement the offshore agreements that were not mentioned by my learned colleague and one to provide the legal framework for the government's Kyoto plan.”

Your committee feels that this practice of using omnibus bills to introduce budget measures has the effect of preventing Parliament from engaging in meaningful examination of the myriad policy proposals contained in them. In particular, the practice makes it almost impossible for committees to conduct a thorough study of the proposed legislation. The problem is further exacerbated by the inclusion of measures that are time-sensitive, or even urgent. Bill C-10 was one of the worst examples of this practice, in that it contained time-sensitive measures for employment insurance benefits during an economic crisis, putting parliamentarians in the impossible position of having to choose between doing a thorough job or helping Canadians who are desperately in need. There is no justification for governments to rush Parliament into adopting legislation in this way.

Unfortunately, this is not an isolated incident. Rather, it is a pattern of behaviour which has been observed in governments of both political stripes. If the pattern persists, at some point Parliament will have to consider measures to protect it from being stampeded into hasty decisions by such manipulations. Therefore, the majority of the committee recommends that:

RECOMMENDATION 9

The government cease the use of omnibus legislation to introduce budget implementation measures.

OBSERVATION 5

Options that might be considered by the Senate for dealing with such omnibus bills in the future include:

1. Divide the bill into coherent parts and deal with them separately, allowing committees to do their jobs properly;
2. Delete all non-budgetary provisions and proceed to consider only those parts of the bill that are budgetary in nature;
3. Defeat the bill at second reading on the grounds that it is an affront to Parliament (by way of a “reasoned amendment”); and
4. Establish a new Rule of the Senate prohibiting the introduction of budget implementation bills that contain non-budgetary measures.

While some of these options would no doubt provoke strong resistance from the government of the day, whatever the political party, they appear to be the only means by which Parliament can put a stop to the practice of introducing budgets in omnibus bills, and restore its capacity to fulfil its role of scrutinizing the government’s legislative proposals in a meaningful way.

VIII. OBSERVATIONS AND RECOMMENDATIONS

RECOMMENDATION 1

The majority of the committee recommends that the Government should consider introducing a system of tiered benefits for the duration of the recession and increase eligibility for Family Supplement benefits, with the goal of providing higher rates of income replacement for those with lower incomes. (pg. 13)

RECOMMENDATION 2

The committee recommends that the Government should consider, if needed, maintaining the benefits available under Pilot Project No. 10 beyond September 12, 2010 for those regions that qualified for the benefits in the original project. (pg. 14)

OBSERVATION 1

While the committee recognizes that not all unemployed workers who paid into the Employment Insurance program will qualify for benefits, it believes that the program could provide broader coverage. The committee also believes that a greater number of Canadians should have access to Employment Insurance coverage. (pg. 16)

RECOMMENDATION 3

The majority of the committee recommends that the government should take steps to increase the proportion of Canadians who could be covered by the Employment Insurance Program. (pg. 16)

OBSERVATION 2

The committee recognizes that there are several aspects to the entrance requirements that may deserve modification in the long run. While the committee could not conduct a broad and in-depth analysis of the suitability of all the entrance requirements it does feel that the unusually difficult economic conditions make it desirable to address at least the interregional inequity. (pg. 19)

RECOMMENDATION 4

The majority of the committee proposes an interim measure: The federal government implement a temporary, two year: a) national standard for qualification to the Employment Insurance program, no greater than 420 hours of insurable employment, and b) the removal of the two-week waiting period that precedes the commencement of benefits. (pg. 19)

OBSERVATION 3

The majority of the committee agrees with several witnesses, including the Canadian Institute of Actuaries, who expressed concern that the \$2 billion Employment Insurance fund reserve is woefully inadequate. A larger reserve in the range of \$10 billion to \$15 billion is needed, both to permit the Financing Board to avoid dramatic fluctuations in premium rates, and to ensure that the fund will be adequate to cover a sharp rise in benefit payments during any future economic downturn. (pg. 23)

RECOMMENDATION 5

The majority of the committee recommends that the government should re-assess the planned structure of the CEIFB and increase the size of the stabilization fund to a level considered adequate by actuarial standards. (pg. 23)

RECOMMENDATION 6

The majority of the committee recommends that the government needs to set firmer delivery standards in order to ensure that Canadians receive their Employment Insurance benefits in a timely fashion. (pg. 24)

RECOMMENDATION 7

The federal government is urged to examine women's access to employment insurance and to ensure that the program closes the gender gap in employment insurance accessibility. (pg. 24)

RECOMMENDATION 8

The committee recommends that the federal government should initiate measures that will permit the gathering of information on EI training programs that will allow a full assessment of the adequacy of these programs. (pg. 26)

OBSERVATION 4

Your committee believes that an effort needs to be made to clarify the appropriate instances when this practice could be used before it further undermines the work of Parliament. (pg. 40)

RECOMMENDATION 9

The majority of the committee recommends that the government cease the use of omnibus legislation to introduce budget implementation measures. (pg. 42)

OBSERVATION 5

Options that might be considered by the Senate for dealing with omnibus bills in the future include:

1. Divide the bill into coherent parts and deal with them separately, allowing committees to do their jobs properly;
2. Delete all non-budgetary provisions and proceed to consider only those parts of the bill that are budgetary in nature;
3. Defeat the bill at second reading on the grounds that it is an affront to Parliament (by way of a “reasoned amendment”); and
4. Establish a new Rule of the Senate prohibiting the introduction of budget implementation bills that contain non-budgetary measures. (pg. 43)

IX. APPENDIX A: Use of the phrase “not a statutory instrument”

The phrase “not a statutory instrument” or a variant is found on the following pages in the Royal Assent version of Bill C-10:

Page 229 at 7.2(2)

Page 230 at 235(5)

Page 232 at 11.2(1)

Page 236 at 39.132(2)

Page 261 at (14) - near the top of the page

Page 266 at (13) - near mid-page

Page 274 at (14) - mid-page

Page 280 at (14) - top third of the page

Page 286 at (3) - top of the page

Page 297 at 11.2

Page 298 (2.2) - near mid-page

Page 298 at 13(2)(a) - near mid-page

Page 301 at 19(3)

Page 302 at 338(3)

Page 434 at (4) - mid-page

X. APPENDIX B: Witnesses

Tuesday, March 10, 2009:

APPEARING:

The Honourable James M. Flaherty, P.C., M.P., Minister of Finance.

Ted Menzies, M.P., Parliamentary Secretary to the Minister of Finance.

Department of Finance Canada:

Yves Giroux, Director, Social Policy, Federal-Provincial Relations and Fiscal Policy Branch;

Erin O'Brien, Chief, Microeconomic Policy Analysis, Policy Analysis and Coordination;

G rard Lalonde, Director, Tax Legislation Division, Tax Policy Branch;

Alison McDermott, Senior Chief, Revenue and Expenditure Policy, Fiscal Policy Division.

Treasury Board of Canada Secretariat:

H l ne Laurendeau, Assistant Secretary, Labour Relations and Compensation Operations.

Wednesday, March 11, 2009:

Treasury Board of Canada Secretariat:

H l ne Laurendeau, Assistant Secretary, Labour Relations and Compensation Operations.

Industry Canada:

Colette Downie, Director General, Marketplace Framework Policy Branch;

Adam Fanaki, Acting Senior Deputy Commissioner of Competition, Competition Bureau - Mergers Branch;

Eric Dagenais, Director General, Investment Review and Strategic Planning Branch;

Richard Saillant, Director, Marketplace Framework Policy Branch, International Investment Policy and Branch Planning Directorate.

Transport Canada:

David Osbaldeston, Manager, Navigable Waters Protection Program;

Brigit Proulx, Legal Counsel, Legal Services;

Brigita Gravitis-Beck, Director General, Air Policy.

Wednesday, March 25, 2009:

Human Resources and Skills Development Canada:

Louis Beauséjour, Director General, Employment Insurance Policy, Skills and Employment Branch.

Department of Finance Canada:

Mark Hodgson, Senior Policy Analyst, Labour Markets/Employment/Learning, Social Policy, Federal-Provincial Relations and Social Policy Branch.

Tuesday, March 31, 2009:

Department of Finance Canada:

Gérard Lalonde, Director, Tax Legislation Division, Tax Policy Branch;

Rainer Nowak, Senior Chief, General Operations and Border Issues, Tax Policy Branch;

Patrick Halley, Chief, Tariffs and Market Access, International Trade Policy Division, International Trade & Finance;

Jane Pearse, Director, Financial Institutions Division, Financial Sector Policy Branch;

Cliff Lee-Sing, Chief, Reserves and Risk Management Section, Financial Sector Policy Branch;

Sandra Dunn, Chief, Financial Sector Stability, Financial Sector Division, Financial Sector Policy Branch;

Lise Carrière, Chief, International Finance, International Trade and Finance;

Erin O'Brien, Chief, Microeconomic Policy Analysis, Policy Analysis and Coordination, Economic Development & Corporate Finance.

Wednesday, April 1, 2009:

Canadian Institute of Actuaries:

Michel Bédard, Member, Task Force on Financing of Employment Insurance.

United Steelworkers – USW:

Erin Weir, Economist.

Teamsters Canada:

Phil Benson, Lobbyist.

Tuesday, April 21, 2009:

Canadian Manufacturers & Exporters:

Jean-Michel Laurin, Vice President, Global Business Policy.

Export Development Canada:

Eric D. Siegel, President and Chief Executive Officer.

Department of Finance Canada:

Erin O'Brien, Chief, Microeconomic Policy Analysis, Policy Analysis and Coordination, Economic Development & Corporate Finance;

Stéphane Lambert, Chief, Sectoral Policy Analysis, Transport & Corporate Analysis, Economic Development & Corporate Finance;

Tamara Miller, Chief, Labour Markets, Employment, Learning, Social Policy, Federal-Provincial Relations & Social Policy Branch.

Treasury Board of Canada Secretariat:

Anthony Chapman, Director, Governance Directorate, Government Operations Sector;

Janice Brown, Senior Policy Analyst, Governance, Government Operations Sector.

Human Resources and Skills Development Canada:

Barbara Glover, Director General, Canada Student Loans Program;

Gay Stinson, Senior Director, Labour Standards and Workplace Equity.

Wednesday, April 22, 2009:

Forest Products Association of Canada:

Avrim Lazar, President and CEO;

Marta Morgan, Vice-president, Trade and Competitiveness.

Tuesday, April 28, 2009:

Canadian Alliance of Student Associations:

Zach Churchill, National Director;

Rick Theis, Government Relations Officer.

Canadian Federation of Students:

Ian Boyko, Campaigns and Government Relations Coordinator.

Association of Universities and Colleges of Canada:

Claire Morris, President and CEO;

André Dulude, Vice President, National Affairs.

Association of Canadian Community Colleges:

James Knight, President and CEO;

Terry Anne Boyles, Vice President, Public Affairs.

Tuesday, May 5, 2009:

As an individual:

Jeremy Leonard, Senior Fellow, Institute for Research on Public Policy.

Wednesday, May 6, 2009:

Canadian Association of Professional Employees:

Claude Poirier, President.

Association of Justice Counsel:

Marco Mendicino, Acting President;

Nick Devlin, Member of the Governing Council.