



House of Commons
CANADA

Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities

HUMA • NUMBER 053 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, February 8, 2007

—

Chair

Mr. Dean Allison

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities

Thursday, February 8, 2007

• (1535)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Order.

Pursuant to the order of reference of Wednesday, October 25, 2006, the committee will now resume its study of Bill C-257, An Act to amend the Canada Labour Code (replacement workers).

I'd like to thank all of our witnesses for taking the time to be here today. This is our last day of hearings on Bill C-257. We will be bringing in department officials on February 13 and going clause-by-clause on February 14 and 15.

Again, thank you to everyone for being here. Today I'm going to start with Mr. Nicholls; then move, via video conference, to our friends from Canpotex Limited; and then I'll go all the way around. I would ask each group for seven minutes. Then we'll have one seven-minute round of questions, followed by a five-minute round. The order will be Liberal, Bloc, NDP, and Conservative. We'll try to get in two or three rounds of questions.

I'd like to start with Mr. Nicholls.

You're from Billiton Diamonds, I believe?

Mr. Graham Nicholls (Vice-President, BHP Billiton Diamonds Inc.): Yes.

The Chair: Welcome, sir. You have seven minutes. I'll let you know when you have one minute left. We have a bunch of witnesses today, and I'd like to keep things moving.

Mr. Nicholls, go ahead, sir.

Mr. Graham Nicholls: Thank you very much, Mr. Chairman.

My remarks today are further to a letter of December 11 that we sent to the standing committee on behalf of BHP Billiton Diamonds.

My name is Graham Nicholls. I'm a vice-president and director of BHP Billiton Diamonds. Joining me in making the presentation today is Maurice Zoe, aboriginal site coordinator at the Ekati Diamond Mine. Nancy Deshaw, our in-house legal counsel, is available to assist in answering any specific questions.

BHP Billiton is the world's largest diversified resources company. Its main asset in Canada is the Ekati Diamond Mine in the Northwest Territories. It's a multi-billion dollar investment and falls under federal labour law. Ekati uses the services of between 1,500 and

2,000 people, including employees and contractors. Of the total workforce, in excess of 30% are aboriginal.

We have important socio-economic obligations to the communities in the area, and we operate under stringent licences to ensure protection of the environment.

Diamond mining provides over 40% of the GDP of the Northwest Territories, as well as a significant flow of taxes and royalties to the federal government.

Our mine is located in the tundra about 300 kilometres northeast of Yellowknife. It depends on air transport and a winter ice road for access, fuel and supplies. The mine is a very complex operation, located in a sensitive environment. It can't be shut down as a result of a labour dispute without risk and negative impacts to the local economy, to the social fabric of aboriginal communities and to the environment.

There was a strike at Ekati last year. We kept operating, using our contractors and non-union employees and the 42% of bargaining unit employees who freely chose to return to work. We did not use replacement workers; no one was brought to the mine who was not already providing services there before the strike started. A first collective agreement was reached, with 97% of the workers returning to their jobs after the strike. There was minimal disruption to other stakeholders, and our safety and environmental commitments and programs were not compromised.

The strike would have lasted much longer if legislation like Bill C-257 had been in place, because the workers at Ekati had the right to return to their jobs and demonstrate that the union did not have their support for the strike. The proposed legislation would make it illegal for these workers, many of them aboriginal, to exercise this right and express their position.

The strike was imposed by the union without an independent strike vote, which is a benefit accorded to unions under the existing code when a tentative agreement is voted on and rejected. However, the code also provides a check against unions prolonging strikes that are not supported by their members, by allowing workers the option of returning to work. This is an example of the many checks that help retain balance in the current system.

The proposed bill is narrow and one-sided, and it would drive a wedge through the careful balance that is found in the existing legislation. We think the code has worked well; let's not fix what isn't broken. Mechanisms are already in place to ensure that the use of replacement workers does not undermine the role of the union. If passed, the bill would surely result in further legislation and labour disputes in an attempt to refine it further, causing even more uncertainty and instability for all stakeholders.

The proposed legislation is even more troubling because there's no evidence that it would reduce the frequency or the length of work stoppages. Rather, based on the key observations of the October 2006 HRSDC report, which you're familiar with, it is likely that the opposite would occur.

As a global investor, we must emphasize that the draft legislation would have an adverse impact on Canada's competitiveness. A decision to substantially expand our mine would be affected, for instance, if we felt that the labour situation would be difficult to manage. If our bargaining power is diminished and unions are able to exploit our dependence on the winter road or air support, or exploit our inability to shut down operations without incurring undue risk and damage to ourselves and our stakeholders and the environment, then our appetite for investment will also be diminished.

Legislation that benefits only unions and imposes risks on business continuity and an employer's ability to comply with his contractual commitments to regulatory bodies and customers alike will inevitably have negative consequences on growth and investment in Canada.

• (1540)

I'd now like to hand the presentation over to Maurice Zoe, to speak about the perspectives of aboriginal people, given our experience at Ekati.

Mr. Maurice Zoe (Aboriginal Site Coordinator, Ekati Diamond Mine, BHP Billiton Diamonds Inc.): Hello, my name is Maurice Zoe. I have lived in the Northwest Territories all my life. I'm a Tlicho citizen of Behchoko, or Fort Rae, which is the largest aboriginal group in the north. I have been employed at Ekati as the aboriginal site coordinator and recreation officer since 1997.

I am pleased and honoured to be here to share my views on how the aboriginals and the aboriginal community were affected by the strike and the union activity that occurred at the Ekati Diamond Mine last year.

Many of our people were not looking for or expecting a strike, which they never voted for. When it did happen, negative effects rippled through the communities and many lives were affected. High unemployment in the community meant no alternative work and no income. Frustrations and challenges of not being able to work caused disruption to family and band unity. Parents, grandparents, and extended families were affected mentally and emotionally. There was evidence of increased bootlegging of alcohol and drug trafficking because people were stressed.

The chiefs and aboriginal leadership felt that they should stay neutral through the strike, but many of our people decided to return to work rather than stay at home, even though threatened with fines

and blacklisting by the union. They wanted to keep their incomes and avoid the bad impacts on themselves, their families, and their community.

The union did not appear to understand how the aboriginal communities function. Labour unions are not part of our communities or our leadership. In this case, they imposed a significant burden on our people by forcing a strike, but at least we had the opportunity to make up our own minds and return to work.

The needs and beliefs of our communities take priority, not what the union wants, especially when the union put our negotiated rights to preferential employment and business contracts at the mine at risk by seeking seniority and no-contracting-out clauses.

Legislation that puts more power in the hands of the unions will take it away from our people and our leadership. We will lose promised jobs and contracts and the right to decide for ourselves what to do. We don't want to be in a situation where going back to work means breaking the law.

Thank you for the opportunity to share my views.

• (1545)

The Chair: Thank you, Mr. Nicholls and Mr. Zoe. It's certainly a perspective we haven't heard yet from our witnesses, so thank you very much.

We're going to move to video conference now.

I'd like to welcome Canpotex Limited. I believe we have Mr. Nieman, as well as Mr. Rudderham.

You gentlemen have seven minutes.

Mr. Ted Nieman (Senior Vice-President, General Counsel and Secretary, Canpotex Limited):

Thank you. I'm not going to use the full seven minutes. I'm sure of that. I'm going to speak briefly and summarize my letter of December 18.

Canpotex is an export marketing company representing the three Saskatchewan potash producers, Agrium, Potash Corporation of Saskatchewan, and Mosaic. They are large, integrated fertilizer companies.

We're the world's largest exporter of potash. We have been averaging sales of approximately 7.5 million metric tons annually over the last several years. This, of course, results in a fairly significant benefit to the Saskatchewan economy and to the Canadian economy as a whole.

As Canpotex, the nature of our product being a bulk commodity and the nature of our company being fully only export, we are fully reliant on the transportation industry, both rail and terminal facilities, to handle our exports. We rely on it entirely with respect to rail transportation to the coast and for terminal handling at the coast. We feel any labour disruptions in the transportation industry would cause Canpotex great concern for immediate lost sales and significant long-term harm to our international reputation. Although we're not directly affected by the Canada Labour Code, in that our workers are not affected by it, obviously rail workers are and the rail industry is, as are terminal handling facilities, and they are our concern.

In 1997 we made a significant change in our operations by establishing a port facility in Portland, Oregon, outside of Canada, simply because of previous labour disruptions that affected our operations in Vancouver. They caused a loss of reputation and sales losses that are hard to recover from.

With respect to the bill itself, our comments are only this. Although we are not directly affected by it, it would have the potential to affect us adversely if there were to be a labour disruption. Obviously our shipments would stop immediately, and from there we would have little ability to ship our product. We have no ability to make any alternate shipping arrangements, and we would therefore definitely lose sales.

The potash market internationally is very competitive. Although we're a large exporter of it, we have intense competition from countries such as Russia, Belarus, Germany, and Israel, which will not be affected by similar legislation, thereby putting us at a disadvantage.

My comments are to please take a close look at this bill before introducing it, committee members, because perhaps it will have adverse effects on all shippers, not only on Canpotex.

Thank you.

The Chair: Thank you, Mr. Nieman and Mr. Rudderham, for joining us today from Saskatoon, and thank you very much for your testimony.

We're going to move to Mr. Atkinson and Mr. Morrison, from the Canadian Construction Association.

Gentlemen, you have seven minutes, please.

Mr. Michael Atkinson (President, Canadian Construction Association): Thank you very much, Mr. Chairman.

My name is Michael Atkinson. As the president of the Canadian Construction Association, I hold the chief staff position with the organization. With me is Jeff Morrison, who is the director of government relations and public affairs with the organization.

We represent the non-residential construction industry. Our members typically build everything except single-family dwellings. We have approximately 20,000 individual members right across Canada, from coast to coast to coast.

While labour relations in the construction industry are generally regulated by provincial legislation, the Canada Labour Code does have application to construction workers in the territories, and it

often establishes a general precedent for provincial legislation. As a result, our industry is extremely concerned with the proposal to introduce amendments to the code that would introduce an outright ban on the use of replacement workers.

Our industry is currently enjoying unprecedented demand in many regions and sectors, especially in Alberta, in British Columbia, and in the territories. Many of these projects are related to oil and gas development and much needed public infrastructure renewal, as well as pipeline projects. This is especially true in Canada's north.

The last time amendments of this sort were seriously considered, there was a genuine attempt to consult with all interested parties, including the general public. The task force headed by Andrew Sims did not accept a complete and outright ban on replacement workers, but instead introduced a proposal that would ban the use of replacement workers where their use was intended to undermine a union's legitimate role. The majority of the members of that task force felt a complete ban would tip the balance too far to one side.

The objective of this bill is simply to deny the right of employers to continue to carry on business during a strike or lockout. In addition, it denies the ability of an employee in a bargaining unit on strike to cross the picket line and return to work in order to make a living. In addition, while the employer cannot hire replacement workers, the striking workers are free to work elsewhere. Such an unbalanced situation does not foster a climate of prudent, responsible collective bargaining. In a balanced setting, a union's right to strike must be countered to some extent by the ability of the employer to keep operating during a labour dispute.

I am going to ask Mr. Morrison to make a couple of comments. Then I'll be back with some concluding remarks.

• (1550)

[Translation]

Mr. Jeff Morrison (Director, Environment, Canadian Construction Association): Mr. Chair, as Mr. Nicholls said in his testimony, what problem do we want to solve by adopting these amendments? For a number of years now, the Canada Labour Code has provided for a limited restriction on the use of replacement workers, and the Canadian Industrial Relations Board has had to make no decisions on this subject. There is no indication that the prohibition against the use of replacement workers would reduce the length of strikes or violence on picket lines.

I'd like to make a comment, Mr. Chair. I hope that every member here present will denounce violence on picket lines. Violence is unacceptable under any circumstances.

British Columbia and Quebec are the only two territorial jurisdictions that prohibit the use of replacement workers. We have observed that a much larger number of strikes are triggered in Quebec than any other provinces that do not have anti-strike breaking legislation and that the duration of work stoppages in Quebec has not declined. In fact, the studies show the contrary.

Certain sectors come under federal jurisdiction because they are important to Canada as a whole. Most of those sectors are not product producers or manufacturers, for example, but rather businesses that offer essential services to all Canadians and are responsible for guaranteeing the free movement of goods, services, capital and people across the country and beyond borders.

Work stoppages in sectors regulated by the federal government inevitably have negative impacts on the economy, on our construction sector and in general.

Mr. Atkinson.

[English]

Mr. Michael Atkinson: Mr. Chairman, in conclusion, I'd like to leave this committee with two points. First, the onus of demonstrating that the current measures are insufficient to protect organized workers and that, therefore, reform is necessary must lie with those who propose such reforms and not with those who support the status quo. That is an underlying principle of any regulatory reform. And that burden of proof has not been met.

The current measures are sufficient, and there is really no factual evidence to suggest otherwise. The current measures in the code more than adequately protect organized workers and their unions by allowing the board to order replacement workers banned in situations where the employer has been found to be involved in an unfair labour practice. Surely such a significant tipping of the scale is better considered and applied on a case-by-case basis, rather than in an arbitrary and sweeping outright ban.

Former Liberal labour minister, Claudette Bradshaw, perhaps summed it up best when she said, "It seems to me that for our part as legislators it is not for us to take sides, but rather to come up with a rule of law where the needs of one side are not met at the expense of the other."

This committee must ensure that the law continues to provide a fair and balanced approach.

Thank you very much.

• (1555)

The Chair: Thank you, Mr. Atkinson and Mr. Morrison.

We are now going to move to CN, or Canadian National. I believe we have Mr. Finn here today. You have seven minutes, sir.

Mr. Sean Finn (Senior Vice-President, Public Affairs, Chief Legal Officer and Corporate Secretary, Canadian National): Thank you, Mr. Chairman. My name is Sean Finn. I'm the senior vice-president and chief legal officer at CN.

[Translation]

Mr. Chair, it is a pleasure for us to be here today and to have the opportunity to give you our comments on Bill C-257.

[English]

We at CN take Bill C-257 very seriously and view it with great concern. CN has approximately 15,000 unionized employees across Canada. These employees belong to seven unions in 21 certified bargaining units and are covered by 30 collective agreements.

There are a number of reasons why certain sectors are federally regulated. One is that we are companies with broad enough operations and important economic impacts that we significantly impact the Canadian economy.

CN, as you know, is a freight railway. We serve eight provinces as well as the mid-United States. In Canada, CN serves the ports of Vancouver, Prince Rupert, Montreal, and Halifax. In the case of Halifax and Prince Rupert, we are the only railway servicing those ports. The majority of VIA Rail Canada's trains travel on CN tracks, as well as much of the commuter traffic of GO Transit in Toronto and the Agence métropolitaine de transport in Montreal.

Since 1971 CN and its unions have been involved in four strikes. Strikes in 1974, 1986, and 1995 all required back-to-work legislation by the federal government. This was done because Parliament deemed it necessary to ensure that the Canadian economy did not suffer serious damage, and also to ensure that CN's customers did not have to shut down plants and lay off workers, with substantial impact to their businesses.

In 2004 CN faced a month-long strike by the CAW. CN continued to operate during the work stoppage, exercising our rights under the existing labour legislation, using managers—who had to be qualified and skilled—as well as retirees to continue to operate the railway and service our customers. The strike was generally peaceful, and ultimately a settlement was reached through the collective bargaining process and ratified by a large majority without government intervention. I'm very pleased to note that just last week the same CAW employees, without a work stoppage, ratified a new four-year agreement.

If this legislation were passed, with its strict limit on the tasks management personnel can perform and taking away our ability to bring back retired managers to help run the railway, it would not be possible for us to maintain operations through a strike.

Under current labour legislation, bargaining representation is system-wide. With the changes suggested in this bill, labour would have the power to disrupt company operations nationwide. Companies would not have the resources to deploy to maintain the critical services necessary to maintain nationwide services essential to the general welfare of Canadian citizens. We fear this would mean a return to a system where any nationwide railway work stoppage would inevitably require government intervention. This is not the way to build trust between management and the union or to improve labour relations.

I'd like to speak a few minutes about the collateral damage that would take place in the event of even a short railway strike.

First, the commuter rail service in Toronto and Montreal would quickly grind to a halt, leading to traffic jams and great inconvenience for millions of people. In some cases, depending on which union is striking, VIA Rail service could largely stop.

I must remind you that while it is possible to apply to have workers designated as essential, the grounds are very narrow, and the chance of success, unless the unions agree, is minimal. Economic consequences are not considered.

Canadian railways are a significant driver of the economy. The Canadian economy is heavily dependent on trade. The majority of our bulk products and many of our manufactured goods are moved to export position by rail, as referred to by Canpotex. Grain, forest products, coal, sulphur, fertilizer, metals and minerals, and many other bulk commodities rely almost exclusively on rail to get to destinations in the United States or to export position at Canadian ports. The many companies relying on just-in-time delivery parts would see their production lines slow and eventually stop. Companies would incur increased storage costs and in some cases would have serious problems finding places to store their production. Canadian ports would face serious backlogs on incoming containers, and ships waiting for out-going products would sit in port running up large demurrage bills. Canadian farmers and other primary producers would suffer, as would Canada's international reputation.

These would not be short-term or one-time issues, as the reliability of Canadian suppliers to meet their commitments would be drawn into question. In the past, strikes at west coast ports have caused traffic to move to U.S. ports, and some of that traffic never comes back.

• (1600)

The Chair: Mr. Finn, I've been notified by the translator to have you slow down a little so that they can keep up.

Thank you.

Mr. Sean Finn: Sure. I can do it in French, if you want me to.
[Translation]

I apologize to the interpreter.
[English]

Anyone who has been to China and met the Chinese exporters or shipping companies can tell you that one of the first questions asked to any visiting Canadian delegation pitching for an increase in Asia's North American trade through Canada is, what about your labour situation? This may refer to the ports, the truckers, or the railways, but to be sure, every work stoppage that leads to delays in moving our customers' goods to market hurts our competitive position and hurts Canada's competitive position.

The government sees great promise in the Pacific gateway initiative. There is talk in Atlantic Canada of an Atlantic gateway initiative. We at CN see great promise as well, but we do not underestimate how quickly our competitive advantages can be lost because of an uncertain labour environment. We at CN are extremely excited by the potential of the new container port that will open this fall in Prince Rupert.

Traditionally, labour legislation has been drafted carefully after lengthy consultation with both labour and management. Existing federal legislation reflects years of discussion and consideration. In the end, it represents a compromise approach, under which neither side gets everything it wants. To arbitrarily change one aspect of the Canada Labour Code destroys that careful balance and has the

potential to significantly damage labour relations in the companies covered by the act.

There are many changes we'd like to see made to the current law, and I am sure the unions also have a long list. It is indeed time to consider or reconsider the current legislation, and do it in the right way. Appoint a panel of experts to look at the law in its entirety and bring forward a set of recommendations reflecting the concerns of all parties based on facts and experience.

Finally, Mr. Chairman, CN believes that Bill C-257 is seriously flawed and cannot be sufficiently improved through amendment, and urges the members of the committee to vote against the bill in its entirety.

Thank you very much.

The Chair: Thank you, Mr. Finn, for being here.

We are now going to move to our last witnesses for today. We have Mr. Turnbull and Mr. Henderson from the Canadian Courier and Logistics Association.

Welcome, gentlemen. You have seven minutes.

Mr. David Turnbull (President and Chief Executive Officer, Canadian Courier and Logistics Association): Thank you, Mr. Chair. Ladies and gentlemen, thank you for inviting us to appear here today.

My name is David Turnbull. I'm the president of the Canadian Courier and Logistics Association. I'm accompanied by Bill Henderson, senior vice-president of operations with Purolator Courier. On behalf of the Canadian Courier and Logistics Association, I would like to provide the committee with our significant concerns regarding Bill C-257.

Canada's courier industry provides delivery of time-sensitive packages, freight, and documents to small, medium, and large businesses, government institutions, public health facilities, and individuals. The courier industry is a vital part of the Canadian economy, with estimated revenues of approximately \$5.5 billion, and it is responsible for employing some 46,800 people.

Today, Canada's manufacturing and retail industries depend on just-in-time delivery for essential replacement parts and inventory. Interruptions to these just-in-time deliveries can cause slowdowns or even closure of production lines, impacting the Canadian economy. The automotive industry, among others, transfers component parts between manufacturing facilities for assembly. Many of the smaller components cross and sometimes re-cross the Canadian border using courier company services.

Distribution of vital medical supplies and diagnostic material are transported by our couriers every day. For example, Canadian Blood Services collects whole blood from more than 14,200 blood donor clinics and ships blood, plasma, and other blood products to nearly 750 hospitals across Canada using couriers to transport. In times of emergency, critical supplies are delivered through the courier industry's national and international facilities.

Let me speak to the implications of Bill C-257 for the courier industry. Bill C-257 would seriously jeopardize the courier industry's ability to deliver essential packages and freight in the event of a strike or lockout. It proposes a fundamental change in the balance between the interests of organized labour and business and tilts heavily towards labour. The proposed bill would not allow businesses to continue operations, while at the same time, it would allow striking workers to seek employment outside the workplace. How can you consider that to be balanced?

No credible evidence exists to suggest that any problems exist in the present Canada Labour Code with respect to replacement workers. Numerous presentations to this committee have quoted statistics produced by Human Resources and Social Development Canada that refute the premise of Bill C-257. The number of work stoppages per 10,000 employees in the province of Quebec is significantly higher than in comparable federally regulated business operations, despite the fact that Quebec has a provincial restriction on replacement workers and the federal code has no such restriction.

The current federal legislation provides a fine balance between the interests of business and labour. It was arrived at after extensive consultation and input. No such extensive consultation led to the creation of Bill C-257.

The Canadian Courier and Logistics Association believes that enactment into law of Bill C-257 would reduce the competitiveness of Canadian businesses. It would make Canada less attractive for foreign direct investment, and SMEs would consider moving to the U.S. or to overseas locations following any national labour disruption.

It is important to note that operations of both unionized and non-unionized companies would be affected by strikes in other sectors. The domino effect from the closure of such facilities as airports due to safety certificates being revoked could ripple through the whole of the Canadian economy. As well as these economic considerations, a significant risk to Canadians' health would be posed by the disruption of courier services for vital medical deliveries.

In consideration of the above, the Canadian Courier and Logistics Association urges the committee to reject this legislation.

• (1605)

In summary, Bill C-257 would impact the Canadian public and industry as follows: It would change the existing balance in part I of the Canada Labour Code without a full consultation. It would lead to longer, more frequent work stoppages. It would hurt workers financially, drawn into disputes unrelated to the employer they work for. It would prevent the delivery of essential parts and inventory in the event of strike or lockout; and, therefore, would undermine the viability of many small and medium-sized businesses, putting jobs at risk. It would endanger investment and, indeed, the Canadian

economy at large. It would prevent couriers from maintaining the delivery of essential services to Canadians. It would adversely impact public health and safety and would inevitably force Parliament to pass back-to-work legislation in strike situations.

So in summary, the Canadian Courier and Logistics Association urge you not to proceed with this legislation.

I don't know if the clerk has handed out my handout. I've detailed in great detail some of the medical supplies that are transported by our couriers, and some of the auto parts, to give you a sense of this, and Mr. Henderson would be pleased to speak to some of the medical issues that are delivered. I urge you to look through this package and consider the broad implications for the whole of Canada. Not just a single industry, but every single Canadian can be impacted negatively if this bill goes through.

Thank you, Mr. Chairman.

• (1610)

The Chair: Thank you, Mr. Turnbull and Mr. Henderson, for being here today.

I have a couple of points of reference for housekeeping.

Mr. Henderson needs to leave by 4:30, and likewise our teleconferencers are only here until 4:30, so I want to let you know that we will have one full round for the teleconference, as well as Mr. Henderson, should you wish to address those questions.

The second thing I want to point out is that people have been asking for empirical evidence all along on whether this would affect investment in Canada. I would suggest that we have Mr. Nicholls here at the table, and you may want to talk to him about that empirical evidence on whether they would invest here in Canada or not. You actually have someone at the table today who can address that.

We're doing to start with Mr. Silva, for seven minutes, please.

Mr. Mario Silva (Davenport, Lib.): Thank you very much, Mr. Chair.

I want to thank the witnesses for taking their time to be here. I appreciate their comments and their concerns. Some of the witnesses who are here before us I had an opportunity to meet in my office today, like Mr. Atkinson and Mr. Morrison. Again, I appreciate your comments.

CN is the organization that I'd like to pose some of my questions to, because they were just in the midst of a possible strike and so they have maybe some more current information that could help us with what's happening at the very moment.

You have 15,000 unionized employees in Canada, according to your statements. How do you qualify your employees? Are they low-skilled, medium-skilled, or highly skilled workers?

Mr. Sean Finn: First of all, I wouldn't want to comment on the current negotiations. They're ongoing, as we speak. I want to make sure that this afternoon I do not in any way comment on the fact that CN and the UTU are in the context of negotiations. We'll do anything we can to avoid a railway strike on both sides by negotiating in good faith to come to an agreement. That's my first comment.

Secondly, railways workers have been around for 100 years, but they are highly skilled in the areas of their expertise. For example, I said to you that during the CAW strike we had carmen and heavy mechanics who were on strike. Carmen will fix cars on our main line, and heavy mechanics will repair locomotives. In both cases, they're highly skilled labourers. Today, locomotives are somewhat complex equipment.

Mr. Mario Silva: Do you just hire them off the street, or do you have to train them for a long time?

Mr. Sean Finn: They have to be trained. In the case of carmen, they have to be trained to fix a railcar in a safe and prudent fashion.

Mr. Mario Silva: How much time do you need to train them?

Mr. Sean Finn: Well, carmen are trained to make sure, when they look at cars coming in from foreign railways or their own railways, that they fit the standards. Railway cars are somewhat complex. It's the same with locomotives. These people receive training within the railway itself.

When we hire people during a strike, be it managers or retirees, we take people from the same trades to do the same work, obviously, because we cannot train people off the street. It's not a question of bringing in someone off the street to become a carman or a train master or a unionized employee. In this area, we use—

Mr. Mario Silva: It's fair to say that you would need quite some time to train these people adequately to operate the train.

Mr. Sean Finn: In the case of a locomotive engineer, we're talking six months of training. Clearly, we do not take people off the street, to answer your question.

Mr. Mario Silva: Also, if you were to go on strike, it would be very unlikely that you could bring in replacement workers in a very short time. Is that right?

Mr. Sean Finn: That's right. We don't bring in replacement workers. We use managers and retired employees, which we did in the CAW strike in 2004.

Mr. Mario Silva: With respect to replacement workers, what you're talking about is actually bringing in people who have retired. You wouldn't be able to bring in people off the street because you wouldn't have enough time to train them. Is that right?

Mr. Sean Finn: That's right. They would not be qualified under the rules to operate on the property as locomotive engineers, conductors, or train men.

Mr. Mario Silva: The reason I ask this question is that a lot of the people and the businesses that come before this committee keep stating that they'd like to have this provision in place. But at the same time, when I speak to them one on one—and it's the same with other groups I've spoken to that have been here before the committee—they outline that if they really go on strike, they can't bring in replacement workers because there are not enough people out there

for the market demand and they need to be highly trained, and so there's going to be difficulty. This is more about seeing what we can do at the negotiating table, but in reality we can't really use replacement workers because they're just not out there to meet the demand.

Is that a fair comment?

•(1615)

Mr. Sean Finn: It is. We cannot bring in people off the street.

As you know, the issue under the current bill is that managers would be considered replacement workers. So even though you have qualified workers—

Mr. Mario Silva: Where have you seen that? I don't see that at all in the legislation. I'm a little bit confused about why you say that.

Mr. Sean Finn: In the last draft you prohibited the use of managers to do the work.

Mr. Mario Silva: Well, it's not the case, but that's one of the things we're hoping to clarify—

The Chair: Mr. Silva, it is correct. That is part of the bill in the English version.

Mr. Mario Silva: Okay. There has been a problem with the English and the French text.

Anyway, it certainly was never the intent of the legislation. I guess we have to speak and try to see if we can work that one out when we go to the clause-by-clause consideration of the legislation as well as with the—

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): I have a point of order, Mr. Chair. The wording does not say that managers do not have the right to work, on the contrary.

[English]

The Chair: There is no point of order. We'll deal with that.

[Translation]

Mrs. Carole Lavallée: The bill is identical to the Quebec government's act, which allows management representatives to work. Mr. Allison knows that; he's from Quebec. Thank you, Mr. Chair.

[English]

The Chair: Thank you, Ms. Lavallée.

Back to Mr. Silva.

Mr. Mario Silva: We will make sure that concern of yours is addressed. I think that will be addressed when we go clause-by-clause through this particular bill.

To the Canadian Courier and Logistics Association, Mr. Turnbull, you were minister during the time of Mr. Harris' government, which repealed the old legislation that was on the books. I just want to know how many of your members are unionized and how many of them fall within the Canada Labour Code.

Mr. David Turnbull: The greatest percentage of people who work within members of our association are unionized, but we have both unionized and non-unionized organizations.

Mr. Mario Silva: With a federal charter that requires that they would be applicable to part I of the Canada Labour Code.

Mr. David Turnbull: Three of the biggest members are, certainly. Purolator is a very large unionized organization. Maybe Mr. Henderson would like to speak to that.

Hon. William Henderson (Senior Vice-President, Operations, Canadian Courier and Logistics Association): Actually, I can speak to Purolator. A collective bargaining agent for Purolator is actually the Teamsters. We're actually the Teamsters' largest membership, followed by our colleagues at CN, subsequently by UPS of Canada. CAW is a collective bargaining agent for DHL. Of the 46,000 employees that the industry employs, approximately 60% or 70% of those employees are unionized.

Mr. Mario Silva: I have a final question, again to CN. I know you're before the board. Has there been a decision yet by the board on section 87.4, what is deemed to be essential services?

Mr. Sean Finn: We're not before the board right now.

Mr. Mario Silva: You're not before the board. Before you go on strike, you'd have to go and ask for a ruling from the board.

Mr. Sean Finn: No. Essentially, if we can demonstrate that for the purposes of health and safety some of our services should be deemed essential, we would go before the board, but historically we have not been successful in that area. The argument would be for GO Transit and AMT. We could make that argument. But let me make it perfectly clear, there's been no determination in the case of the railway. Anything we do is considered essential services as defined in the current legislation dealing with health and safety.

The Chair: Thank you very much, Mr. Silva.

Madam Lavallée.

[Translation]

Mrs. Carole Lavallée: Thank you very much, Mr. Chair.

First I'm going to speak to Mr. Finn, but also to all those around the table and who are watching via videoconference. I'm going to say again, for the nth time, that proposed subsection (2.2) is very clear in French. I know that Mr. Finn speaks very good French. You need only look at the French version, which states:

(2.2) Malgré le paragraphe (2.1), l'employeur peut utiliser les services des personnes suivantes pendant la durée d'une grève ou d'un lock-out :

It then states:

a) toute personne employée à titre de gérant, surintendant, contremaître ou représentant de l'employeur dans ses relations avec les employés;

He can also read paragraph (b). Subsections (2.3) and (2.4) must be read together. It's much clearer in French than in English. As for subsection (2.4), it states: "The measures"; with regard to

conservation measures, for example, we know that that refers to subsection (2.3). Those measures are referred to nowhere else.

It's clear in French, but it should be clarified further, whereas, in English, it should be rewritten. I think the confusion is even greater in the latter case. I know that, like Mr. Finn, you are really very intelligent. So you will no doubt understand these things.

I'm a bit surprised, even disappointed, to see that the group of witnesses today consists solely of employer representatives. Until now, we were used to having the union and management parties equally represented. That kind of arrangement enables employer representatives to hear the opinions of the unions and persons representing people in favour of the bill, to see that there is indeed a problem and that it is human. When you meet people, you can see how genuine the problems are. I'll talk to you about that if I have the time. I hope that will be the case.

Mr. Zoe, I would like to know whether you are unionized.

• (1620)

[English]

Mr. Maurice Zoe: No, I'm not.

[Translation]

Mrs. Carole Lavallée: You're what's called a representative of the employer? You are a manager?

[English]

Mr. Maurice Zoe: I'm not a manager, I'm an employee. I help the employees on the site with personal problems and problems at home. I'm available for them on the site. When they need to talk to somebody, they come to me. I do translation and things like that for them.

[Translation]

Mrs. Carole Lavallée: But you nevertheless belong to what we call management?

[English]

Mr. Maurice Zoe: Indirectly, yes.

[Translation]

Mrs. Carole Lavallée: You aren't unionized?

[English]

Mr. Maurice Zoe: No.

[Translation]

Mrs. Carole Lavallée: In your brief, you write, and you repeated it out loud:

Many of our people were not looking for or expecting a strike, which they never voted for.

And yet there are 300 and some unionized workers at the Ekati mine, nearly 400 even, and there have been two strike votes.

You know how it works. Miners are brought in by plane and stay there for a period of two weeks. Then they go home for two weeks. There were two votes, one at the end of February 2006 — pardon me, but I don't know the exact dates — and one in early March, I believe, around March 10. The vote was 74 percent in favour of the strike. Two-thirds of the workers voted for this strike.

If there hadn't been a strike vote, Mr. Nicholls obviously would have been the first to mount the barricades or at least to complain. He would have filed a proper complaint with the Canadian Industrial Relations Board. So I'm quite surprised to hear your allegation on that subject.

I should also say that the end of your presentation is more anti-union than anti-Bill C-257. I understand that you have needs and that your community has needs and beliefs, but it's a delicate matter to say that they go against union activities.

Having said that, I believe that is a personal opinion of yours and that it belongs to you.

In a labour dispute, you have to consider balance. Everyone is right to say so, except that we don't have the same definition of balance. Balance is the union party and the union party working together and negotiating together over a long period of time, then coming to the conclusion that there must be a strike or a lockout. The employer deprives itself of a portion of its production because, under Bill C-257, and based on 30 years' experience in Quebec, there are indeed managers who work. Workers are also deprived of their work and income. So that's really balance.

When replacement workers come in, it's as though a third player were entering a match that's already underway and who starts playing for the employer.

[English]

The Chair: You have one minute.

[Translation]

Mrs. Carole Lavallée: So that's entirely unfair because there are two players on one team and only one on the other. It's that balance that is broken in the Canada Labour Code.

In Quebec, this act has been around for 30 years, and there have never been any disasters. But, in Quebec, every time a strike lasts a long time or there's vandalism and violence, we realize that it happens at Videotron, Cargill and Radio-Nord, all businesses that are under federal jurisdiction.

• (1625)

[English]

The Chair: Thank you, Madam Lavallée.

Just before we go to Ms. Davies, for the sake of our new members I want to point out that when Mr. Nadeau was before us and was asked to clarify between the French and the English versions, he was unable to do so at that time. That's why this issue still remains unclarified.

Mr. Finn, it's very clear that it's something we'll have to address as we do clause-by-clause study. It was something that the sponsor of the bill was unable to clarify at the time.

We're going to move to Ms. Davies. You have seven minutes, please.

Ms. Libby Davies (Vancouver East, NDP): Thank you very much, Mr. Chairman, and thank you to all of the witnesses for coming here today.

I do think it's important to note that the way these hearings have been conducted at the committee, there weren't any arrangements made to invite to the committee aboriginal workers who are members of the union at the Ekati Diamond Mine who actually supported the strike.

So, Mr. Zoe, while I certainly respect your viewpoint and the role you play there—I think it's an important role—we're hearing your viewpoint, but we're actually not hearing from members of the union who are aboriginal who did support the strike. I think we should note that.

Secondly, Mr. Nicholls, I'm interested in some of the comments you made. In your brief you said that Ekati, or BHP, did not use replacement workers. Yet I think it's pretty clear that Ekati directed its contractors to do the struck work. They're actually not BHP employees, so they were replacement workers.

Indeed, one of your updates to your own employees, number 4, makes this quite clear. To quote from it, it says, "Many of you are no doubt curious as to how we intend to keep operating in a strike situation." Then you go on to give the answer, "...we intend to operate in the normal fashion, with our own employees and the employees of our alliance partners". So you talk about "employees of our alliance partners". Then there's a later reference from your spokesperson to the CBC, making it very clear, "we've got construction workers, our contractors, and our alliance partners".

So I'm very surprised to hear you say today that you didn't use replacement workers, because I think the information is somewhat different. I'd like you to respond to that.

I'm curious to know whether or not the services of AFI were used. I was reading some information about this organization on my way here. For the benefit of the committee, AFI International Group Inc. "strives to recruit the best personnel for clients requiring replacement workers to continue operations...includes performance monitoring and the administration of payroll and benefits, which removes clients from all direct responsibility for the temporary workforce". That's from their website.

I'm curious to know whether or not BHP used AFI to do at least monitoring, and using I think tactics that a number of the strikers found quite intimidating, such as videotaping people, following people by vehicle and on foot. So I'm curious to know if BHP does use the services of AFI.

If you could answer those questions, that would be great.

Mr. Graham Nicholls: Thank you.

I'll just take the last question first. I'm not familiar with AFI or its use at Ekati. That's entirely new to me, so I simply can't say that I can confirm that at all.

In terms of things like videos, I remember being videoed by a picket line at our pickup point at the airport. So videos have been used, but I recall them being used by the picketers.

In terms of contractors, we actually, most of the time, have more contractors at site than we do employees. We make extensive use of contractors throughout the operation. Our contractors and our employees work side by side, doing the same work, using the same equipment. That activity continued, along with the use of employees who freely chose to return to work.

Yes, we did use contractors. We've always used contractors. We continued to use them during the strike.

In terms of whether they are replacement workers or not, I suppose under the new legislation they would become replacement workers, but in terms of the normal historical definition of the term and as it exists under the legislation as it stands right now, we don't think those are replacement workers and we did not use replacement workers.

Ms. Libby Davies: Your response is very interesting because I think it gives us some illumination as to why this amendment to the Canada Labour Code is actually necessary, to make it very clear what the ground rules are, because in your mind, you didn't use replacement workers. But I think the information is pretty clear that they were not actually employees of your organization, so they were replacement workers and it did create an imbalance.

I think that kind of nuance becomes very important, and that's why it's important to have something spelled out in the labour code.

Similarly, in your brief, you questioned the strike vote. You said it wasn't an independent strike vote, and yet it seems to me the question is, is a strike vote legal or not? Maybe you can answer that.

If Ekati didn't think it was legal, presumably they could have challenged it under the Canada Labour Code by filing a complaint under section 87.3. I don't think the company did that. So it sort of leaves us with the impression that somehow this strike vote was not legitimate, and yet it was something that was entirely legal and even the company itself didn't challenge it. Is that correct?

• (1630)

Mr. Graham Nicholls: Mr. Chairman, as indicated in my brief, under the Canada Labour Code, in the instance that a proposed agreement is voted on and rejected, it can be considered a strike vote. That's what occurred, and so be it. At the same time, there are other checks and balances in the system, as I also wanted to point out.

In terms of the strike vote, there is another point we're trying to put across here when we're dealing with our aboriginal employees, and I'd like to ask Mr. Zoe to respond to that a little bit. Was there a genuine understanding by the employees of what they were doing when they voted to reject that offer, and did they understand that it meant they were going to be going on strike? That level of understanding of what is actually at stake can be difficult for a group of people who have never had experience before in dealing with unions in these kinds of situations.

I would like to ask Mr. Zoe to respond to that.

Ms. Libby Davies: I'm happy for Mr. Zoe to respond to that, but I think we should recognize that he comes here with a certain point of view. I think there are clearly other members of the aboriginal community who are involved in the union and would have a different point of view.

Mr. Zoe is certainly welcome to do that. Before he does respond, I'm just curious: if your assertion is correct and you really believe that you didn't use replacement workers and you don't intend to in the future, then what's the worry about this amendment? If this is not a practice you believe you've engaged in, then what's the problem with actually putting it into the labour code to make it clear that replacement workers should not be used?

The Chair: Please give a quick response, because the time's up.

Mr. Graham Nicholls: Thank you.

It would mean that it would be extremely difficult for us to retain the operation at all, because the workers we were able to keep at site would be deemed to be replacement workers and couldn't legally work there. We'd be facing a very, very serious situation.

Ms. Libby Davies: So you couldn't use your contractors?

A voice: No.

The Chair: Thank you, Ms. Davies and Mr. Nicholls.

Ms. Davies mentioned aboriginals. I'll just point out that we tried to get the Cree grand council to be here. We contacted them many times. It just didn't work out for them to be here. We had hoped to have some aboriginal—

Ms. Libby Davies: On that point, Mr. Chairman, did you attempt to contact any aboriginal members from the union?

The Chair: These were actually people who contacted us, once again.

Ms. Yelich, do you have any questions for the gentlemen on videoconference? They need to go at some point soon.

Mrs. Lynne Yelich (Blackstrap, CPC): I certainly have to say hello, because I have the greatest number of potash mines in my riding. I've been trying to emphasize how important it is to my province of Saskatchewan. We are not only agriculture and potash; taking it to the bigger picture, there is the mining. I think there's a good argument that every province would be adversely affected or that it could be a very difficult situation for any province that has a lot of mining. I think that's the way our country is going; mining is leading, I'm sure, as a sector in our country.

I just wanted to thank you for your presentation. I've had many witnesses questioned many times over whether they have a unionized workforce. In the case of the banking industry, for example, that's quite irrelevant. Could you give me some material examples?

I would also ask Mr. Turnbull to give me a material example of how a shutdown of an industry like rail would impact your members and your customers. We know how corporations and employees are affected, but I think what's missing in this whole debate is the public—the customers, the consumers. I think it was in your opening remarks, or perhaps it was over here, that you started to talk about global trading and the big picture. So I would like to hear from both of you about how a shutdown like rail would impact your members and your customers.

Mr. Nieman, would you like to talk a little bit about...?

• (1635)

Mr. Ted Nieman: Sure. In most of the countries where we do business, and that's about 26 countries, we are engaged in fairly intense competition with other potash suppliers, as I mentioned before. They are particularly from countries such as Russia and Belarus, which produce a lot of potash, and also from Germany and Israel.

In most countries we have contracts with various customers, and in many of the situations many of our customers also have supply relationships, not only with us but with others. In some cases we do enjoy exclusive relationships, but those are more the exception than the rule.

In those situations in which we would not be able to meet our commitments, it's very simple: our customers, who already have a relationship with our competitors, would simply buy more from our competitors, and our sales would suffer. In some particular cases very serious damage may be done, in that it will take a long time to regain the confidence and trust of those customers to again supply to the amounts we had been supplying before the strike. It can cause a lot of difficulty.

We ran into that situation—

Mrs. Lynne Yelich: I was going to say we want empirical data. Many of the committee members are not happy there's not enough empirical data on how this could cause a real crisis in our country or globally. So any picture you can put on this of just how serious and severe this could be to your industry would help us.

Mr. Ted Nieman: Are you looking for amounts of lost sales, or what have you?

Mrs. Lynne Yelich: Yes.

Mr. Ted Nieman: I'm sorry, I can't exactly say what they might be, but an extended strike could result in lost sales of probably several hundreds of thousands of tonnes of potash, if it were extended for any particular period of time, which would be many tens of millions of dollars to our shareholders and to the economy of Saskatchewan—

Mrs. Lynne Yelich: So you're looking to us—

Mr. Ted Nieman: —and it would not take a very long time for that to accumulate as well.

Mrs. Lynne Yelich: Thank you.

Mr. David Turnbull: First of all, I would like to point out in fact that our industry, the courier industry, has a remarkably good labour relations record. To the best of my knowledge, in the last two decades there has been one day of a strike at one company, which is quite a record. We believe in treating our workers well and in working with them.

The particular concern that I have expressed today is the domino effect of a strike in some other sector. I use the example of the auto sector. There are many small components that cross the U.S.-Canada border as many as seven times, going backwards and forwards until the final product is finished, with small components being added to something on an assembly line and shipped back across the border—and backwards and forwards they go. You would close down a tremendous amount of the Canadian auto sector if you were to block the ports, for example.

There are all kinds of examples with health care. I've shown in great detail here list after list of health and diagnostic products that are shipped by our couriers on a daily basis. Let us say that due to a strike an airport were to lose its safety operating certificate; if they did not have the right safety measures in place, the correct and natural effect would be for them to lose their safety operating certificate. That would close down the courier business. There are tremendous numbers of businesses in Canada that depend on next-day delivery of small packages; that's their inventory. Let's say we have a factory that has a broken machine part and they have to repair it. Who do they look to? They look to the courier industry to move these parts.

This is the danger, as millions of workers could potentially be affected by a strike in some other sector.

We doubt we're going to have strikes, though you can never tell. We believe that with our record of very good labour relationships, it's not going to happen in our industry. It's the bump-on effects.

• (1640)

Mrs. Lynne Yelich: I'd like to thank you, Mr. Nieman, for being here. I just want to follow up on what Mr. Turnbull said and say that you, too, have excellent labour relations. You have not had a strike for many, many years, and I think you are negotiating now. So I think it has to be reiterated how important the relationships are and that there already appears to be a good balance. So the status quo works quite well, would you say? It's just an example showing that you don't need back-to-work legislation.

Mr. Ted Nieman: Thank you.

The Chair: Thank you.

Thank you, Ms. Yelich.

Mr. Nicholls, someone took the bait the first time around, and I'm going to ask you this: as a resource-based multinational with billions of dollars invested, if this law passes, will it affect how you invest in Canada?

Mr. Graham Nicholls: I think, again, we have to look at it on a case-by-case basis and whether the code applies, which it doesn't in all jurisdictions, but if this legislation passed.... As I've already indicated, we have a significant operation in the territories, and when we expand those we're investing hundreds of millions of dollars. As I've indicated, when we look at this type of legislation potentially coming forward and the type of labour relations situation we could be in as a result, it would affect our decision. I'm not saying it would be determinative, but it would certainly be a key consideration of our management in considering whether to go ahead with that kind of investment.

The Chair: Thank you, Mr. Nicholls.

We're going to move to our next round, which will be five minutes. We have Mr. Dhaliwal and Mr. Savage.

Mr. Nieman, I believe you're going to head out now as well. Do you have to leave?

Mr. Ted Nieman: Yes, if there are no further questions, I'll be leaving.

The Chair: Thank you for taking the time to be with us today.

Mr. Ted Nieman: Thank you.

The Chair: Okay, we're going to move to Mr. Dhaliwal and Mr. Savage for five minutes.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): I think Mr. Merasty wants to make a quick comment on the record.

Mr. Gary Merasty (Desnethé—Missinippi—Churchill River, Lib.): Yes, very quickly, I want to say to Mr. Zoe that as a first nations person, and understanding that I think your presentation was good, I don't think it's fair that you've been painted as anti-union, as I've heard here.

I understand the challenges of our first nations communities sometimes in dealing with these issues. I also understand the neutrality, the jurisdictional issues, and sometimes being economically marginalized from the mainstream.

I want to say that for the record here, because I don't necessarily agree with the statements that have been made about your presentation.

The Chair: Thank you, Mr. Merasty.

We're going to move to Mr. Dhaliwal now.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chairperson, and thank you, panel, for coming out here.

When I was listening to Mr. Finn, it seemed as though it came up as very scary tactics. When I look at your part of the business—and you need very well-trained people to work in your force—with minor clarification to the way this bill is written, I think it will serve your purpose.

Making such a drastic one-day statement that this bill is a total flaw—I don't agree with that. Would you like to comment on that particular perspective?

Mr. Sean Finn: Experience has shown that in the railway industry—and I'll come back to this again—the impact of shutting down a railway to Canada's economy would be enormous. But more important is the previous speaker's comment, that the impact on customers would be enormous.

Imagine Alcan in northern Quebec shutting down three smelters. We wouldn't be able to move aluminum out of Shawinigan, Quebec, or out of Lac Saint-Jean to various places in Canada. Think of shutting down the Port of Vancouver and the Port of Halifax at the same time—major issues.

The issue here is that, with all due respect, the law as drafted is pretty clear that it provides for a right to use managers for simply—

Mr. Sukh Dhaliwal: That's what I said, Mr. Finn, with that clarification. Madam Lavallée said this is part of the understanding of the bill. I'm here replacing someone.

But if that is the case, I would like to ask, will that serve your purpose—yes or no—in that perspective?

Mr. Sean Finn: Broader than that, Canadian companies have to have the possibility, other than just to maintain their assets, to make sure they can serve their customers and maintain the economy.

That's why, in 1999, when the Canada Labour Code was amended, Mr. Sims clearly did not go to that point, saying we need a balance

between these two areas—and I understand that. But these comments about scab workers in Quebec....

This is not a provincial debate, and a province is not the country and vice versa. But it's important that we realize here that to look at most Canadian companies as regulated by this law requires that we continue to maintain a level of service, which is important for the country.

If it requires that we have replacement workers, because in our case we need skilled workers and use managers, that's one issue. But I submit to you that we're not talking about CN. There are other industries in Canada that you might want to continue servicing people without having highly skilled people, and that's just a balance in the power.

So to answer your question, in CN's case, no, it would not be sufficient. We think the bill is flawed—

• (1645)

Mr. Sukh Dhaliwal: But when I look at 95% of business in this country being run by small businesses...and I went to small businesses on this particular bill. In fact, they're happy because in British Columbia—I'm speaking from a British Columbia perspective—there was an NDP government, and then a free-enterprise government of so-called Liberals came in and didn't touch that legislation either.

When I went to the business community, they supported the union, because those small towns, including the aboriginal population, depend on those union towns. So I think making statements such as that is not fair.

I'm going to pass it to Mr. Savage for his time.

Mr. Michael Savage: Do I have seven or eight seconds?

The Chair: Go ahead.

Mr. Michael Savage: Let me finish on this point.

I may come back again, Mr. Finn, because I come from Halifax, and I'm very concerned that the Port of Halifax will be impacted by a work stoppage.

My question is a follow-up to Mr. Dhaliwal, in order to understand the extent to which CN can operate with managers and retirees. If the bill was explicit in saying you could use managers, and let's say that it allowed you to move them from establishment to establishment, which is not allowed now, could CN operate under those circumstances?

Mr. Sean Finn: Clearly we will always do what we can to make sure we serve the customers and not shut down a port. By using managers and retirees, you know...who knows what will happen in the future? That's one of the issues, obviously.

We also have unionized clerks who prepare waybills and customs documents. They're not necessarily highly skilled people, but you cannot send a train out of Halifax to Chicago without doing the customs work. That would be an example of where you want to make sure those trains can get through the border. I can load containers in Halifax, stop at the Canada-U.S. border, and not get through because I don't have customs documentation.

So I'll come back to my point. I have listened to quite a few of the hearings, and I think the Canadian Chamber of Commerce and other chambers in Canada have clearly said that you have to think beyond the railway here. What are the customers' needs here, and how do we make sure that the customers are served? Small businesses are customers of the Purolator business as well as CN, and those customers also require that we move their goods to market. It would be somewhat difficult to explain to a customer in Halifax who needs one container moved that we can't move their car through the customs border because we're missing documentation.

I think it goes to the point that this system is not broken today. We had a strike of the CAW in February of 2004, the first railway strike in the last 20 years that did not get solved by back-to-work legislation. After a 30-day strike they came back to work. We operated the railway. We served our customers. The parties came back and signed a new agreement.

You know, it does work. Last week the CAW, who two years ago were on strike, signed a new three-year agreement.

So my comment to you is that I don't think the provision under a federal statute requiring that we have the right or not to use replacement workers is required in the current environment in Canada. With all due respect, I do not share your view that small businesses aren't impacted by this. They are.

The Chair: Thank you, Mr. Savage. You're slightly over your time.

We're going to move to the Bloc now.

Monsieur Lessard, five minutes, please.

[Translation]

Mr. Yves Lessard (Chambly—Borduas, BQ): Thank you, Mr. Chair. I want to thank our guests for accepting our invitation.

I simply want to make a comment on Mr. Nicholls' remarks on workers' ability to judge the merits of the decision.

When it's said that they made the decision to strike because they didn't understand what the vote implied, I think that's quite contemptuous, particularly since, in that situation, we're talking about Aboriginal people. I've worked with Aboriginal people and they are people concerned about being able to communicate among themselves and to understand situations clearly. I've even seen them interrupt meetings that I've attended in order to hold group meetings among themselves so that they could be sure they had understood everything. So these are people who are concerned about clearly understanding things before making a decision.

I use that example to say that you can't rely on an argument such as yours to establish the validity of Bill C-257.

I very much like the viewpoint of Mr. Turnbull, who urges us to examine what's really essential. I don't think everything can be essential, and I think you'll agree with me on that. Otherwise, if Messrs. Finn and Turnbull, for example, told us that everything must be essential, all that would then remain for you to do would be to seek the abolition of the right to strike. But I don't think that's what you are arguing for today. So some things are not essential.

Based on experience observed in Quebec, there are key areas, including health, where there is a right to strike, but also essential services. However, those services are based on a relationship of understanding, first of all, as to what must be essential or not, and when the parties do not agree, a third party decides the matter.

I want to get a clear understanding because we'll have to take a position on this question. You two have argued to this effect, and you may intervene, as well as others. What should we favour between the two? Is this an approach whereby we agree on essential services with the union, or the right to replacement workers?

• (1650)

[English]

Mr. David Turnbull: I'm going to say that there's a false premise to that question. I have explained, in a brief statement, the ripple effect through the economy of a federal strike. It's important that we not interrupt the flow of goods and inventory to small and large companies—

[Translation]

Mr. Yves Lessard: Yes, I understood that.

[English]

Mr. David Turnbull: No, no, I'm getting to your question. I just have to put this into the right context.

It's important that we get those services there. I have spoken about a tremendous number of areas that are affected. I just used two examples. I used the auto sector and I used the health care sector.

First of all, I don't think your bill is fixable for two separate reasons. One is a technical aspect—that you would have to effect changes to so many bills in Canada, federal bills that are not referenced in the Bloc's bill—which I believe technically isn't addressable. Secondly, I'm going to say that the very nature of federally regulated companies and organizations is such that these are important services to the whole of Canada.

I don't believe there is a problem at this moment. When you look at the situation in Quebec, the number of days lost in strikes in Quebec under legislation that bans replacement workers, and you compare it with the federal experience, I am saying wait a minute, this is a solution looking for the problem. There is no problem.

[Translation]

Mr. Yves Lessard: You're missing a great opportunity to answer my question. You're answering with overall and philosophical arguments. However, I'm asking you a question about something very concrete. I followed you very well. Everything has a cascading effect. However, businesses don't all strike at the same time.

If I understand your logic correctly, there may be a strike at some point in the goods handling link or chain.

For that link, do you advocate that there one day be a mechanism for replacing by means of replacement workers, or rather a mechanism in which the parties will identify what is essential and what is not?

[English]

Mr. David Turnbull: Let's be very clear. This bill suggests that replacement workers would be anybody in the organization. It is very clear in the drafting of the bill in English, and that is the fact that it is only for conservation measures. Read your own bill. Read your bill. That's what it says in the bill.

The Chair: We're out of time.

Sorry, Mr. Lessard, that's just over the time.

We're going to move to Ms. Davies for five minutes, please.

Ms. Libby Davies: Maybe I can follow that up and help clear that up a bit.

First, it is certainly not a surprise to me—and I don't think to anybody else—that we have major employers and very large companies coming here today saying they don't like this bill, they don't want to see a change. In fact, it's not a surprise to me to hear BHP saying the sky is going to fall, and we might have to make another decision. That's something that always happens when there is a change in legislation.

I would point out that in B.C. and in Quebec, where this legislation has existed for many years, there has been no flight of investment, and companies keep operating. In fact, it has helped produce labour stability. There is a point of view there, but the future will show somewhat different.

The question I wanted to ask to both Mr. Finn and Mr. Turnbull is there's a perception that this bill will somehow stand on its own, and it is not attached to the Canada Labour Code. It is actually an amendment to the Canada Labour Code.

Mr. Finn, you said that in recent history there have been four strikes at CN. I'm curious to know whether or not CN has ever used section 87.4 of the Canada Labour Code, because that is the section called "maintenance of activities". When you read it, it really is the designation of essential services.

To you, Mr. Turnbull, as well, when you say there is a problem with this bill because it doesn't allow you to deal with that in terms of ongoing measures, it talks about conservation, but in actual fact, the very next section in the Canada Labour Code, which is section 87, lays out the whole process for how either the company or the employer or the union can go forward to the board and have an agreement about what those essential services are.

This is a very important point, because I think some members of the committee believe there is no provision whereby these essential services can be sorted out and an agreement can be made. In actual fact, it is right there in the code. It is the very next section. You may not like the section, but has it been used by CN or by your company when you have actually sought those agreements to have those determinations made for maintenance and services, or what we call essential services?

• (1655)

Mr. Sean Finn: We have not recently. Again, in the first three strikes, back-to-work legislation was not an issue.

Ms. Libby Davies: It wasn't an issue.

Mr. Sean Finn: No, it wasn't an issue then.

In 2004, we reflected on it, mostly for GO Transit or for the transit authority in Montreal. To be able to do so, either the federal minister does so or the shipper can do so. A customer cannot, but I'll come back to that in a second.

More importantly, as you know, one of the criteria places the burden on the shipper—in our case, it's on CN—to demonstrate to the Canada Labour Relations Board that there's immediate danger to the safety or health of the public. There are no commercial criteria, so having the CLRB telling Alcan to shut down four smelters, including one in Kitimat and three in Quebec, because there's a railway strike in Canada is not a criterion to have that service determined as being essential. There's no demonstration that by not producing aluminum you're impacting the safety or health of the public. Obviously, that argument is hard to make in that case.

In the case of GO Transit, you have to demonstrate that by having a transit strike in downtown Toronto you are endangering public health, because effectively there will be so much gridlock in downtown Toronto that you cannot get an ambulance between an accident site and the hospital. That's pretty hard to make as a case. It goes to show that sometimes you have transit strikes in Toronto that are not tied to the railway.

To answer your question, we have not done so, but the better view of council is that the provisions provided for under section 87.4 are effectively restrictive and therefore cannot be used. Therefore, without prejudging the decision, it would most likely come to the view that no services of CN would be considered essential.

I submit to you that the reason is that there's no economic argument to reach such a conclusion. But if you make an economic argument that the impact of a railway strike in Canada will shut down the Port of Vancouver, the Port of Halifax, and any smelter, and that it would have a major impact on the automotive industry, then why do you think Parliament decided three times in a row—1974, 1986, and 1995—to enforce back-to-work legislation or at least arbitration? Parliament realized that there was an economic impact to the country of Canada.

Ms. Libby Davies: Parliament always has the ability to do that, or the right, and that's something we debate very closely. But the point here is that I think we're hearing again and again that there's no provision whereby essential services can be determined.

Certainly a strike has an impact. We all accept that. A strike has an impact both on workers who are on strike and their families, on the local community, and certainly on the employer, the company, the services, and the public. But the point here is—and I really want your agreement—that there is a provision whereby essential services....

It may not go as far as you want. Your job as the employer is to argue that, right? It's to say that "essential services" to you means X, Y, and Z. You go before the board and the union goes before the board, and you each make your case. But that provision does exist. That process exists. But I think there's some suggestion here that somehow it doesn't exist, when it does.

• (1700)

The Chair: It does, but it's very restrictive.

Ms. Libby Davies: That's what essential services are. Otherwise, you would be impacting the strike.

The Chair: That's all the time we have.

I know Mr. Morrison and Mr. Atkinson want a quick comment. We're just over time, so just give a quick response.

Mr. Jeff Morrison: I just wanted to clarify one of the premises of the question, though, Ms. Davies.

You mentioned that you're not surprised that the large employers are here making the points that we are making. To clarify, we are not a large employer. The Canadian Construction Association represents roughly 20,000 companies, of which 90% to 95% are small businesses with under twenty employees or less.

To meet the point that Mr. Dhaliwal made—that many small business are welcoming this bill—I can suggest to you that Mr. Atkinson and I are here not because this bill impacts construction, because we are not a federally regulated industry, but because many small business members of our association have asked us to come because they are fearful of the exact same repercussions, in terms of the trickle-down effect, that Mr. Turnbull has raised.

The Chair: Mr. Atkinson, you can make a quick last point.

Mr. Michael Atkinson: It's a very quick comment.

There is a provision in the code right now that allows you to go before the board and get a temporary ban on replacement workers. It's there. The case has not been made to amend the code. The burden of proof is on those who want to put an outright ban in there, but you have not made the case, and there is a provision in the code right now. Mr. Sims' group put that in to allow the union or whoever to go before the board and argue that, because of an unfair labour practice, a temporary ban should be put in place. It's there.

The Chair: Thank you, Mr. Atkinson, Ms. Davies.

We're now going to move to the last round.

Mr. Lake, for five minutes, please.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): A couple of key concepts just keep coming to mind as I'm listening to the conversation. One is balance, which we talked about a million times, and the other one is due diligence. Ms. Davies holds up the Canada Labour Code, part I of which was established through several years and much consultation. Now, however, we're talking about an ad hoc amendment to the Labour Code, a one-off with no real consultation. I don't know, but I think this is a fundamental problem with this approach.

Even the union leaders I'm talking to right now are talking about the situation right now being quite healthy. I'd like you maybe to comment on that first. In the current labour situation, is something seriously broken? What is the screaming reason for this legislation right now?

Let's start with Mr. Turnbull.

Mr. David Turnbull: As I've indicated, in our industry, to the best of my knowledge, in the last two decades we've had a one-day strike in one of our members. So clearly, within our organizations, there's no need for this. We have very good labour relations.

Our concern is strictly with the domino effect that can be caused, which can cause havoc throughout the whole of the Canadian economy and will significantly reduce the attractiveness of Canada as a place for inward investment.

Mr. Mike Lake: Right, and I want to get Mr. Nicholls to comment on that, because actually when you talked about the domino effect before, I was thinking about Mr. Nicholls and their situation.

Your workers are union employees in the federal jurisdiction, the very people who the legislation is purporting to help.

I want you to envision a strike or lockout not in your own industry but instead in the air transport industry, which is very important to you, let's say, in the summer, when perhaps the ice roads aren't usable and you're so reliant on the transport industry. If a union in the air industry was able to use this legislation to completely shut down air service in your area, how would that affect your company, and in turn, and most importantly, the workers who work for you?

Mr. Graham Nicholls: Very simply, we'd have a great deal of difficulty getting to our site, with billions of dollars of investment and thousands of people working there, because the only way to get there, except for a few weeks of the year, is by air.

Mr. Mike Lake: Also, aside from your business, I want to think about the people who live in your area and how that air transportation stoppage would affect their ability just to get the regular goods and services they need to live up there.

Mr. Graham Nicholls: Certainly a lot of those communities are accessible only by air. Once again, there are no roads to connect them. Our industry is dependent on those kinds of services.

Other types of mining operations that we might be looking at are also dependent on rail service. So there are many, many different linkages that we have with those kinds of services.

But the impact on other stakeholders, I think, is extremely important to our analysis of this legislation. It's not just an impact on our bottom line; it's also an impact on the communities we have obligations to. We care very much about the sustainability and the benefit of those communities, and we can see a lot of negative ripple effects on those communities as a result of work stoppages that would get much, much worse as a result of this legislation.

● (1705)

Mr. Mike Lake: Right.

Now, Mr. Finn, I have a question for you. I'm thinking about the farmers in Ms. Yelich's or Mr. Merasty's riding. I think mining is pretty important in Mr. Merasty's riding as well.

I want you to talk about the smaller bargaining units within the rail industry and give an example of the type of work stoppage with smaller bargaining units that might be able to cause the rail industry some problems if they were to walk out and not be able to use management even.

Mr. Sean Finn: You talk about smaller bargaining units. This is a team sport. You don't operate the railway by separate unions. You think about the T and E, who are technical people—our signalmen, for example, and crossing signals and the whole signalling system on the railway. It's not a very big union compared to the overall unions. They're not transportation people. They're very much tied to the railway itself. But you cannot operate the railway without having signals, obviously, so that's very important.

Mr. Mike Lake: That small group could actually shut down the rail industry, though, if no one else was allowed to work and they couldn't bring in replacement workers.

Mr. Sean Finn: Rail traffic controllers in downtown Edmonton who operate the network on a North American basis realize this. We have rail traffic controllers sitting in Edmonton who essentially dispatch trains across North America for CN. It's a very small union compared to other unions within the group, but that group can do so.

It's not a question of isolating the unions; it's making sure there's a balance between the negotiating parties. We treat all unions on the same basis. They're all as important, one as the other, to us when it comes to how we operate the railway. There's no one trade or skill that will allow us not to operate the railway in a way that we couldn't do so with management. So I think it's important.

Mr. Mike Lake: So when that small unit shuts down the railway, what is the alternative for the farmer in Mr. Merasty's riding or Ms. Yelich's riding? Do they fly a plane in to carry their wheat? What alternative do they have?

Mr. Sean Finn: Obviously, when it comes to movement of grain in Canada, there are two railways, but as you know, we don't all service the same attachment point. It would be difficult. There's no doubt that you could shut down the movement of grain in Canada by not having grain being moved for a period of time on the railway, and that's important.

It comes back to my point. It's not just the farmer. Think about the ships sitting in the Port of Vancouver, waiting to receive the 50-car block of grain coming from Saskatoon or from anywhere else in western Canada. The ripple effect is a lot broader. It's broader than just one industry and one partner. It impacts the economy as a whole.

The Chair: Thank you, Mr. Lake.

We're going to move to our last round. It is the Liberals' turn.

I believe they're okay at this point in time.

Mr. Michael Savage: The defence rests.

The Chair: We're going to move back to the Conservatives again, and we have Mr. Albrecht for five minutes, please.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

I'd like to address a question to Mr. Zoe as well.

I have the privilege of serving on the aboriginal affairs committee as well, and I certainly support any initiative that would increase economic development among our aboriginal, first nations people. I think we have a lot of support for that.

If my figures are correct, BHP says they employ between 1,500 and 2,000 people, roughly 30% of those being aboriginal, so around

or up to 600. What percentage of the community—I don't know how you would define that geographically—would that involve for you? Would that involve 50%, 10%...?

Mr. Maurice Zoe: Under the IBA with the company, BHP, we have a hiring target of 200 aboriginal people from the Dogrib Nation, and because we're dealing with entry-level people with low skills, we can't put all of them in to fill those 200 positions. So our target number is 200. And we have 175 aboriginal people from my community employed with BHP at an average wage of about \$70,000 a year.

Mr. Harold Albrecht: So 175 out of how many, is what I'm trying to get at? Is that half of your community?

Mr. Maurice Zoe: There are about 600.

Mr. Harold Albrecht: So it would seem to me that a work stoppage would have a large impact on that size of community.

You mentioned you're a councillor or an interpreter, but I'm not exactly sure what all of your roles are. So you would be in a position to see a lot of the stress that's caused. You mentioned that in your report.

In addition to alcohol, bootlegging, and drug trafficking, have you seen evidence of violence as well because of work stoppages? We often hear the argument that replacement workers create violence on the picket lines. Is there violence as a result of not being at work?

Mr. Maurice Zoe: I guess there were a lot of people who got caught driving impaired, and all of that, during the strikes. You've got to remember that in an aboriginal community where you have about 470 people, there are only about 20 jobs available for that population of 470.

When BHP came into the picture they offered scholarships and royalties to the aboriginal community that had been impacted. Of that royalty money, aboriginal people used half a million to send people to post-secondary university, and we produced two lawyers with the scholarships. So they did pretty good!

Voices: Oh, oh!

Mr. Maurice Zoe: In a small community there are no jobs. In maybe our smallest community there are about 120 people and maybe five jobs.

● (1710)

Mr. Harold Albrecht: I think you've just underlined for me the impact in terms of the aboriginal community, and it certainly plays into this. Mr. Merasty also serves on that committee, and we've just done a study on post-secondary education, and it's interesting to hear you tie that in. I had no idea that would be a component of it, and it's an important one. So thank you.

A voice: It is important.

The Chair: Thank you, Mr. Albrecht.

That is the last round of questions.

Ms. Davies asked for one question. You can have a quick question, Ms. Davies, and then we'll wrap it up.

Ms. Libby Davies: I just want to say that I don't think there's any dispute that a social agreement with the aboriginal community, and the benefits of work and a major employer, are very important. That's not what we're debating here today; we're debating whether or not we need to have a bill that disallows replacement workers.

We've heard a lot about how this will make a balanced situation unbalanced and tip the scale the wrong way. I'm curious, when there's a lockout by the employer and the unionized members are forced out, does the union get to say whether or not the members stay there? I don't think so.

So when it goes the other way and there's a lockout, there's no right of those members to stay on the job, is there?

The Chair: Who wants to handle that?

Some voices: Oh, oh!

The Chair: Of course, you wanted to ask a tough last question to finish, didn't you?

Mr. Atkinson.

Mr. Michael Atkinson: I was going to say those employees are still allowed to work elsewhere. In the bill that's being proposed, even the employees who don't agree with the union can't cross the picket line.

The Chair: Okay, thank you very much.

Just before I thank all of our witnesses for being here today, I do want to remind everyone that if there are any witnesses you would like to see when we talk about Bill C-36, Bill C-269, or Bill C-278, could you get those to the clerk by Tuesday at noon. Christine will be sending out a notice to that effect, but it is Thursday now and we'll be heading to Friday and Monday. And remember there are the amendments for Bill C-57 as well, but you do have until Wednesday at noon to get them in.

Once again, I'd like to thank all the witnesses for being here today, and thank you for taking time out of your busy schedules.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.