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Chair

Mr. James Rajotte

Standing Committee on Finance

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● (1900)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): We'll call the ninth meeting of the Standing Committee on Finance to order.

Mr. Carrier, on a point of order.

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): Mr. Chair, before we get under way, I just want to mention that I have a copy of a letter sent to you by the Chair of the Transport Committee dated February 13 last. It concerns the Navigable Waters Protection Act that is included in Bill C-10. In this letter, the chair of that committee suggests that we work together. Prospective witnesses could be invited and the two committees could hold a joint sitting to examine the bill that fall within the purview of the Department of Transport. I received a copy of the letter this morning. You have yet to make a decision about this. As far as I know, the committee has not had an opportunity to discuss this suggestion.

Our Transport Critic has not been invited to attend this evening's meeting. I see that some members of the Transport Committee are in attendance. The Bloc was not informed that a joint meeting would be held. I'd like to know if you have come to any kind of decision.

[*English*]

The Chair: Thank you.

Mr. Tweed, would you like to address this?

Mr. Merv Tweed (Brandon—Souris, CPC): Thank you, Monsieur Carrier. I was the one who sent the letter, and the correspondence between the clerks suggested that because of time restraints, if a member from the transport committee chose to participate through the committee.... I see Mr. Volpe's here, and obviously you, Monsieur Carrier, have a lot of experience on that committee. The message I got was that if you wanted to be at the committee, you should try to substitute in or out.

I regret that Monsieur Laframboise, if he wanted to be here, couldn't be here.

The Chair: From a finance point of view, what we tried to do was have one session dedicated to navigable waters. Obviously members are free to substitute in or out. It is my understanding that this is how it was handled in the last session of Parliament with respect to the immigration provisions of Bill C-50.

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: We were not informed of any joint discussions that took place. Our Transport Critic, Mr. Mario Laframboise, was not specifically invited to attend this meeting. I can't say if the lines of communication were any better in the case of the NDP. I'm disappointed. I'm no longer a member of the Transport Committee and it's not up to me to make any decisions for their members. I was intrigued by the idea of organizing a joint meeting of the two committees.

[*English*]

The Chair: Thank you.

Mr. Jean, did you want to address this?

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Yes, thank you, Mr. Chair.

I just wanted to advise Mr. Carrier and all members that I never received an invitation either. I wanted to show up because I have an interest in this particular file from an environmental perspective. Certainly this isn't a joint meeting, as far as I'm aware. If it is, I'm not aware of that. I just found out a minute ago that one of the members didn't show up and I've been signed in, but other than that, I'm just coming as an observer. That was my intention, and I'm certain he was aware that the finance meeting was taking place and that this was on the agenda, which is why I'm here today. So I'm not certain, but—

[*Translation*]

Mr. Robert Carrier: I regret that the information was not conveyed to all parties, so that we could at the very least invite our party critics to be on hand to discuss this matter.

[*English*]

The Chair: Thank you.

Mr. Mulcair.

[*Translation*]

Mr. Thomas Mulcair (Outremont, NDP): For your information, regarding the point of order, we checked and we were never informed of any suggestion to hold a joint meeting of the two committees. I regret that a colleague who could have attended and contributed his expert opinion of the analysis done by the Transport Committee was not informed and will not be there.

[*English*]

The Chair: Mr. Mulcair, I wasn't at the transport subcommittee where this was discussed, but my understanding is that it was the transport subcommittee and a member from each political party was there. It was not from the full transport committee with respect to a joint meeting with the full finance committee.

With respect to the agenda here today, it was my understanding as chair that members, even before the budget implementation bill was passed, wanted the finance committee to study this issue expeditiously, which is why we started infrastructure prior to the passing of the budget implementation bill, and it was my understanding that this was a priority of this committee. That's how I proceeded.

If the committee wants to proceed, I guess we would wait for a full motion from the full transport committee to study this item. If they want to hold a joint committee in the future, that's up to this committee and the transport committee. But it was from the subcommittee of the transport committee that the chair wrote it, and I understand that all four political parties were represented at that subcommittee.

But this is a finance committee meeting, at which members are free to substitute in or out if they have an interest in this particular issue.

We will now get to the agenda.

We have one individual and five organizations here for this panel of an hour and a half: first of all, the Ontario Federation of Anglers and Hunters; second, the Lake Ontario Waterkeeper; third, CanoeKayak Canada; fourth, as an individual, Mr. Jack MacLaren; fifth, the University of Ottawa; and sixth, the Department of Transport. If I can ask each of you to do an opening statement of not more than five minutes, we'll go in that order. Then we'll go to questions from members.

Mr. Farrant, we'll begin with you and work our way down the table.

● (1905)

Mr. Greg Farrant (Manager, Government Relations and Communications, Ontario Federation of Anglers and Hunters): Thank you, Mr. Chair.

Good evening, Mr. Chair and members of the committee. On behalf of the Ontario Federation of Anglers and Hunters, our 100,000 members and supporters, and 655 member clubs across the province of Ontario, I appreciate this opportunity to speak to you this evening on certain aspects of Bill C-10, the budget implementation bill.

Let me be clear that we understand that the recent budget and this bill in particular were born out of the necessity for the government to respond quickly and decisively to the current economic circumstances facing both the Canadian and global economies. In that respect, we commend the government for their actions and, in particular, for their attempt, through the budget, to remove impediments to moving forward with critical programs.

We do, however, have a number of concerns relating specifically to the clauses of Bill C-10 that deal with proposed amendments to the Navigable Waters Protection Act. In our view, some of the proposed amendments have the potential to dramatically alter the ability of Canadians to continue accessing and using thousands of miles of waterways currently protected under the act. These same amendments could impact negatively on fish habitat, fish passage, and recreational sport fishing in Canada, which contributes over $3.5 billion annually to the national economy.

In Canada, the use of rivers and streams for commerce and recreational purposes is a fundamental part of our economic and social fabric. The ability to use our waterways helped to build this nation. While the waterways may not today be the highways or lifelines of commerce they once were, they are nonetheless essential to a host of economic and social activities that are essential to the well-being of Canadian businesses, individuals, and communities.

In the process of trying to bolster some aspects of the economy and put people back to work, it is imperative that the government does not eliminate the critical checks and balances that protect other elements of the economy and the way of life of Canadians. It is essential that in fixing some problems we do not create unforeseen economic, social, and environmental problems that will live with us far beyond the current economic crisis. We believe that some of the proposed changes to the NWPA have this potential.

I won't bother with a great deal of history on the NWPA. Most of you are familiar with that, and we have limited time here.

Navigability in Canada is both a question of law and of fact. To be navigable in law, a watercourse in question must be navigable in fact. Navigability is, in fact, demonstrated if a waterway is used or is capable of being used by the public as a water highway, for lack of a better term. In essence, the test developed in Canada is one of public utility. If a waterway has real or potential practical value to the public as a means of travel or transport from one point of public access to another, it is considered navigable.

Equally, if it serves or is capable of serving a legitimate public interest in that it is or could be regularly and profitably used by the public for some socially beneficial activity—recreational fishing, for example—then it must be regarded as navigable land within the public domain and must continue to be protected as such.

To provide a balanced view of our proposed changes to the NWPA, I would be remiss if I did not point out that we do believe there are several positive proposed changes to the act. These include the proposal to strengthen enforcement and compliance provisions, including fines, appointments, and powers of officers. We also understand and support the government's efforts to remove some of the barriers to economic development by attempting to minimize red tape. In particular, we support the efforts to provide for a single approvals process for related projects.

Third, we support the concept of classifying works and, in the case of minor works, of developing standards of construction, placement, operation, safety, and removal, provided that there is a concerted effort to enforce those provisions. However, we have major concerns about, and must strongly oppose, proposed changes to the NWPA that would provide for the classification and potential declassification of navigable waters. In specific terms, proposed subsection 5.1 (1), proposed subsection 12(1), proposed subsection 13(1), and proposed section 14.1 are all of concern, since they provide for the classification of navigable waters. We support the concept of classifying works and types of projects and providing for the development of standards for specific projects and works that are of a minor nature, such as, for instance, floating docks and diving platforms and what not. Both the Ontario Ministry of Natural Resources and the federal Department of Fisheries and Oceans have been working towards a system whereby it is possible to simplify approval for minor works. However, the classification of what constitutes a navigable water is extremely problematic, particularly if it provides the potential to declassify or diminish any existing or potential navigable waters.

● (1910)

Because the proposed amendments are not clear in this regard, the potential to declassify navigable waters exists. This is a major concern to us and to other users of Canada's waterways with regard to public access and the use and protection of the fishery.

Recognizing that we are under time limitations, we have the following two recommendations.

Given that the government will be reviewing both the Environmental Assessment Act and the Fisheries Act, we strongly recommend that the proposed amendments to the NWPA be decoupled from Bill C-10 and that they be considered in concert with a review of these other acts later this year; and that a more fulsome review and public consultation process, particularly regarding the classification of navigable waters, be included in that review.

Failing that, we recommend that amendments to the NWPA be generally approved with the exception that the reference to the concept of classifying navigable waters be completely removed from the proposed amendments. If this alternative is adopted, there should be a further clarification of the wording of the revised act confirming that nothing in the act is intended to reduce or abrogate the responsibility of the minister to ensure that the impacts of development on navigability, public use of waterways, and the environment are fully considered.

In closing, if I may say, Mr. Chair, in this context it is important that the government not only do the right thing but also be seen to be doing the right thing, and in our view, amendments to the NWPA, which may be long overdue, have no place in this bill.

I thank you for your time, sir.

The Chair: Thank you very much for your presentation.

Mr. Mattson, will you be presenting?

Mr. Mark Mattson (President, Lake Ontario Waterkeeper): Thank you, Mr. Chairman and members of the committee.

I know how short your time is and how important your time is. We'll try to keep to within the five minutes.

I'm president of Lake Ontario Waterkeeper. We represent waterkeeper organizations from British Columbia right through to Labrador. I'm joined here by my vice-president, Krystyn Tully, and the Ottawa Riverkeeper, Meredith Brown.

There really are two points about the proposed changes to the Navigable Waters Protection Act that I hope you take home with you tonight. If the changes are approved, two things will happen. First, no longer will the government need to get the consent of the people when it wants to take away the rights of navigation. Second, the government will no longer be required to do its due diligence before infringing upon those rights of navigation.

Both of those rights or obligations that are currently protected under the Navigable Waters Protection Act are now being rephrased as being old, outdated, and no longer important. We know from our relations with the hunting community, paddling community, fishing community, and the tourism community right across this country that this is not true. These are not outdated rights and principles, and the people still require that this government, its elected officials, or the actual public servants be required to get the consent of the people and to do due diligence before they take away or infringe on those navigable water rights.

● (1915)

Ms. Krystyn Tully (Vice-President, Lake Ontario Waterkeeper): We are specifically concerned about four changes: the elimination of the environmental assessment trigger is one, exempting whole classes of waterways from scientific study or public review is another, exempting whole classes of projects as well as waterways is a third, and minimizing public notice and consultation when making decisions that affect navigation rights is a fourth. These changes mean reduced transparency in decision-making, they mean a loss of valuable scientific review, and they mean the elimination of parliamentary oversight from one of our most important laws.

We waterkeepers live our lives on the water from British Columbia to Ontario to Newfoundland and Labrador. We know the history behind this law because we live this history. First and foremost, navigation is a right enjoyed by every individual; it's not a privilege that's been given to us by government, and to date, no western democracy has ever taken this right away from its people.

The current act recognizes this and requires that government seek the public's consent and advice every time it infringes on our rights. The new act says we can't afford to do this, we don't have the resources, and we need regulatory efficiency in the name of economic development. That's not true.

The current act gives the minister and the Department of Transport all the authority they need to exempt small projects. It doesn't apply to waters that aren't navigable, and it doesn't apply to projects that don't interfere with navigation. Not only are the amendments overkill and unnecessary, but they won't even accomplish the goals they are supposed to. They eliminate the rights of the public, but at the same time they off-load oversight and accountability to politicians, to provincial governments, and to municipal governments. The work doesn't go away; it just gets passed to somebody else.

It centralizes decision-making in Ottawa, so bureaucrats here will tell people in Alberta and Quebec what will happen on their waterways, and the people who live in those communities and know the waterways better will not have an opportunity or a forum to be heard, to present science, or to help make decisions better. It creates piecemeal protections that will protect some communities at the expense of others. Some communities in Canada will have rights and privileges that others do not enjoy.

There is an attempt here to address some of the economic concerns, and we're well aware of what those are, but at the same time, it's granting opportunities to one group at the expense of another and it's going to hurt hunting and fishing, tourism, outfitters, first nations, and small businesses—the people who rely on these rivers for their livelihood.

We appreciate the opportunity and the privilege to speak to the committee today and we urge you to remember the thousands of people who can't be here tonight, the other waterkeepers, the first nations, the hunters, the paddlers. For the record, we do want to say we do not believe there has been adequate consultation. So many people still need to be consulted, including in your ridings at home, and we apologize that we're here at the eleventh hour pointing out major flaws in this important piece of legislation. We wish we'd had an opportunity to be part of a full consultation prior to tonight, but this is where we are. We're bringing forward the best available research to let you know that the Navigable Waters Protection Act amendments in Bill C-10 are going to pose a huge problem, create administrative burdens, and centralize decision-making in the future, and to ask that you consider them separately from the finance bill, maybe as part of the environmental assessment review that's coming up later this spring, and through the transport committee, and through the environment department.

Mr. Mark Mattson: Thank you, Mr. Chairman.

Thank you, members of the committee.

The Chair: Thank you for your presentations.

We'll go now to CanoeKayak Canada, please.

Mr. John Edwards (Domestic Development Director, CanoeKayak Canada): Thank you, Mr. Chair.

Ladies and gentlemen, my name is John Edwards. I'm the domestic development director of CanoeKayak Canada. I'm joined by Anne Merklinger, the director general of CanoeKayak Canada.

We are an organization with 50,000 members in Canada. We are one of Canada's oldest sporting organizations, founded in 1900. We are the organization that is responsible for putting Olympic athletes on the podium for Canada at the Olympic Games, whether they be in the sport of flat-water canoeing, marathon canoeing, or whitewater canoeing.

Also, we are a regular attendee at the annual meetings of the Canadian Marine Advisory Council and we are on the Standing Committee on Recreational Boating to advise the Office of Boating Safety and ultimately Transport Canada on issues of safety with regard to recreational boating in Canada. We take those responsibilities very seriously.

I will point out that committee members have received a handout. I'm not going to speak directly to that, but it has more detail.

There are three key points we wish to communicate this evening.

First of all, the Canadian identity is entirely wrapped up with the rivers of Canada. As has been pointed out, it is considered a birthright of Canadians. It is founded in the deepest traditions of our common law, the common law combined beautifully with the aboriginal considerations for access to the waters of Canada. In a unique way, we have combined the heritages of the two main peoples of Canada.

I ask you these questions. With this heritage that is so important, will the iPod generations know nothing of the old Canada? Surely not. Are the rivers of Canada in the way of the new Canada? Are they barriers? Surely not.

There is an economic aspect to this. There is a new and emerging tourism economy in Canada. The act did not foresee that when it was originally drafted, but that is surely the case today. Canoe and kayak touring and ecotourism have become a major part of the economic life of much of rural Canada. Rural Canada struggles to find economic purpose in this country. Please don't take another piece of economic development away from rural Canada.

Last and most important is safety. Ladies and gentlemen, obstructions are hazards by definition. They are threats to life and limb. How will the public be warned about hazards on newly non-navigable waterways? Will there be signs up at every point of public access to the newly non-navigable waterways? Safety issues need to be thoroughly reviewed in this matter. We're not confident that has been the case.

In closing, the members of CanoeKayak Canada, like all taxpayers, wish the Government of Canada to operate in the most efficient and focused manner in order that we can have the best government at minimal cost. There appear to be anecdotal examples where the NWPA has been carried too far in its implementation. We would be pleased to work with the government and other stakeholders on the above-noted issues to ensure the NWPA is applied appropriately in the 21st century. We don't think this has ever been done with Canada's paddling communities. We think the committee members are well aware of what an effective and full public consultation is, after having just gone through an election.

We are also well aware of the need for the government to expedite infrastructure spending in the near term of two years. We respectfully suggest the Budget Implementation Act of 2009 be amended to permit Transport Canada to retain additional staff to expedite these approvals.

Finally, we recommend that the NWPA amendment section of the bill be removed from the Budget Implementation Act of 2009 so that a proper consultation can occur.

Thank you very much for your time.

● (1920)

The Chair: Thank you, Mr. Edwards.

We'll now go to Mr. MacLaren please.

Mr. Jack MacLaren (As an Individual): Thank you, sir.

My name is Jack MacLaren. I own a small farm outside of Renfrew in Ontario. I have run into trouble with the Drainage Act and the Navigable Waters Protection Act.

If you can imagine it, on my farm there's something similar to a bowl—imagine these desks being about 400 to 500 yards long—with a small mud hole in one end into which all the drainage goes, and a ditch that we have dug over to a point where the water filters into the ground. There must be holes in rock or something there.

Last year, without my permission, the beavers moved in. Normally this area goes totally dry. The beavers moved in and dammed this thing up. It flooded my lawn and flooded a large piece of land I was going to plant apple trees on, which I can't do, because apple trees don't like wet feet. In wanting to correct this situation, I phoned a gentleman who owns high hoes. The first thing he asked me was whether I had a permit. I said, "It's totally on my land; I don't need a permit." He said, "You do. I will be fined..."—I forget the amount of money he would be fined—"and so will you." So I checked with another one and heard the same thing.

So here I have this flooded land, my lawn flooded, a little piece of creek—not a creek but a ditch—300 feet long, and I can't get it cleaned out because of the Drainage Act and the Navigable Waters Protection Act. I have pictures here, which I can't show you, of a gentleman standing in the water. We took a picture of his feet. The water is over the top of the toes of his rubber boots. But I cannot clean that out.

First, I phoned MNR, and they sent a gentleman down. He told me I had to go to Fisheries and Oceans. Don't forget, this is entirely on my farm, in front of my house. It's probably 400 to 500 yards long. I cannot remove it from my land without.... A Fisheries and Oceans representative came from Prescott. He had no problems with it. I had a problem getting him to send me a letter okaying this. Now I am supposed to go back to MNR in Pembroke, apply for a permit, and get it from them.

This was now coming on fall, and as you all know, where the water seeps into the ground, it disappears. It's in the bowl; it disappears inside that area. When it freezes, the water no longer can get away from there. It's too late by that time for me to get a permit to get the work done. So I am stuck with a little piece of ditch, totally on my property, and I think they're calling it a navigable waterway.

This is the most stupid piece of legislation.... I guess I'm not supposed to use that terminology here, but it is the most stupid piece of legislation I have seen. It's under the Navigable Waters Protection Act. The water that is down past the beaver dam won't come over the toes of your boots, but I still have to go through this. I would like the Drainage Act to be scrapped and the Navigable Waters Protection Act to be scrapped on private land. I'm sure all of you gentlemen don't want to go fishing on my farm in a mudhole in which you would sink out of sight, because there are no fish there.

So I would like this totally scrapped.

Thank you, sir.

● (1925)

The Chair: Thank you, Mr. MacLaren.

Mr. Amos, you'll be presenting on behalf of the University of Ottawa?

Mr. William Amos (Staff Counsel and Part-time Professor, Ecojustice Environmental Law Clinic, University of Ottawa): I'll have to explain. In fact, I will be presenting on behalf of a number of different groups.

Thank you, Mr. Chair. Thank you, members, for having us here. My name is Will Amos. I'm staff counsel with the University of Ottawa and Ecojustice Environmental Law Clinic, so I'm an environmental lawyer by trade.

Today I will be representing a variety of ecotourism, paddling, environmental, and outfitter groups. Among the groups that I am speaking for today is Mountain Equipment Co-op, with its several million members; Sierra Club of Canada; the Canadian Environmental Law Association; the West Coast Environmental Law Association; Fondation Rivières; Nature Canada and some of its affiliates; and the Canadian Rivers Network, with 35 groups underneath it, which include a number of outfitters and ecotourism enterprises. Effectively, I'm speaking for a large number of groups here, and I wouldn't characterize my remarks as strictly coming from the "environmental community".

To start, I'd simply like to point out a very important statistic, and it is that the Census of Canada report from 2003 indicated that 2.3 million Canadians paddle every year. This is a lot of Canadians. This is an act that actually impacts upon many interests. These are real people, real voters, real interests.

There are a number of issues that I'm going to try to raise. Some of them have been touched upon by my fellow presenters, and I do hope that we get to touch upon them in the question period. The main points I'd like to make are the following.

First, fundamental changes to the Navigable Waters Protection Act and to protection afforded to the public's navigation rights should not be bundled into a budget bill. They do require an adequate consultation process, and we would posit that the process of consultation was simply not adequate last spring. The dozens of groups that I'm representing were not contacted, not aware, and not able to make comments, and I would hazard a guess that if they had been consulted, the amendments proposed might have been better and a streamlined NWPA might have been improved.

Second, the amendments that are proposed would weaken the right of navigation, sacrifice outdoor recreation opportunities, and compromise the federal environmental assessment role through the use of non-transparent ministerial exemption provisions.

I'd also like to spend some time today, if time permits, exposing what we perceive to be the myth of environmental overlap and duplication with the provinces.

First of all, I'd like to say that many of the groups I represent would have loved to appear last spring. They weren't invited to the transport committee hearings. I understand that the transport committee did consider a cross-country tour. That would have been a fabulous idea, and I think there are a lot of paddling groups operating at the local level that would have greatly appreciated that. While I'm grateful for the opportunity to make last-minute representations on behalf of these organizations, this does not compensate in any way, shape, or form for the inadequate opportunities that there were last spring.

Thank you for the opportunity, but we would like to do this again, and our main ask at the end of the day is going to be that, as other groups have mentioned, the proposed amendments be removed from Bill C-10 and that they be discussed again in the context of a broader reform initiative of the Canadian Environmental Assessment Act.

We understand that the government is proposing reforms. The Navigable Waters Protection Act amendments speak directly to those reforms of environmental assessment. We believe they should be discussed in the same context, at the same time, and that this will yield a more effective series of changes.

I think that if the federal environmental role in protecting the public right of navigation is to be transformed, it does behoove the government to follow a normal legislative process such as a bill that's tabled, that can be examined by civil society, that can be discussed before committee, and not a process where no bill is in front of an incomplete group of civil society.

I think that in the context of discussing our request that these proposed amendments be taken off the table, it's worth noting that in 2005 there was a precedent for this kind of withdrawing of proposed amendments to environmental law. In 2005, the Liberal minority government proposed a number of changes to the Canadian Environmental Protection Act, and after discussion, they decided they would remove those because of the kerfuffle it caused. I think there is room to believe that this is a process that can be done again.

● (1930)

In terms of provincial overlap and duplication, I think we're getting a lot of rhetoric about red tape, a lot of rhetoric about what the provinces are able to do and what the federal government is able to do. I think it's really important to note that the federal government has constitutional jurisdiction over navigation and the provinces do not. No provincial environmental assessment process is going to look at navigation. By creating these exemption provisions, the federal government will allow the transport minister potentially to issue an order to take out certain works, take out certain kinds of waterways, from the approval process, which thereby removes them from the environmental assessment process, which therefore means the provinces will be left to do the EAs, and they won't be looking at navigation.

Thank you.

The Chair: Thank you, Mr. Amos.

We'll go now to the Department of Transport.

Mr. David Osbaldeston (Manager, Navigable Waters Protection Program, Department of Transport): Thank you very much.

I'm the national manager for the navigable waters protection program for Canada. Joining me today is Madam Brigit Proulx, who is our legal counsel with a specialty in the Navigable Waters Protection Act and who has been working on the amendments quite extensively with us over the course of the last several months.

Thank you very much for the opportunity to participate today. I'd like to start out by expressing our appreciation for your consideration of the amendments as proposed for the Navigable Waters Protection Act. The current amendments will allow a more flexible regulatory regime, intended to support the diversity of the modern-day Canadian marine environment overall and, in particular, the development of infrastructure and natural resource projects.

Streamlining of the federal government regulatory process for such projects, we understand, remains a priority for the government and for Transport Canada as we continue to move forward towards change and economic growth. As you are aware, the main objective and scope of the new bill, of these amendments, is intended to meet the needs of proponents of works and those who use Canada's vast waterways in order to allow for a balanced approach to the shared use of those waterways.

The current legislative and regulatory process fails to provide a review and approval process commensurate to the degree of potential interference to navigation. Small infrastructure projects with little impact on navigation as well as projects over waterways that cannot be reasonably used for the purpose of navigation are being caught in extensive review processes presently required within the legislation. As a result, current infrastructure project development timelines are being seriously affected and financial opportunities for funding are being passed by. For example, the North Channel Bridge, which connects Akwesasne and the city of Cornwall, serves 2.2 million auto trips and over 125,000 truck trips per year. The replacement of this bridge is long overdue. However, due to a gap within our legislation, a separate act of Parliament would have to be passed to bring it to fruition, a process that will take much, much longer than simply providing for its review, as with all other bridges in Canada, under the proposed amended provisions of our legislation.

Even the smallest but most common infrastructure projects, such as bridge re-decking and guard rail replacement, projects that have no impact upon the navigational envelope underneath the bridge structure, currently generate a need for a navigational assessment. Simply put, we do not feel that such requirements are warranted or reasonable.

In order to make the Navigable Waters Protection Act relevant to today's operational and economic climate, the amendments would introduce a tiered approval process that would ensure a review and approval process more commensurate with the degree of potential interference that a work may have upon navigation than what is provided for today.

In saying this, we do recognize that there is concern among some interest groups that these amendments will adversely impact the current public right to navigate and that major infrastructure and resource projects will no longer be required to complete environmental assessments under the Canadian Environmental Assessment Act. I'd like to take this opportunity to assure the committee that the act will continue to protect the public right of navigation and that the environmental requirements for such projects will remain.

The new provisions of the act will define classes of navigable waters that would not reasonably be used for navigation. Those waters, by the way, are very much as Mr. MacLaren has so kindly described: a private lake, for example, with the land of a single landowner surrounding it. The intention of defining classes of minor waters is to better focus our efforts on truly navigable waters as opposed to farmers' drainage ditches or water courses too small, too shallow, too obstructed, or too steep to be reasonably used for the purpose of navigation.

Similar to minor waterways, the concept of minor works will be introduced in the new legislation. Criteria are being developed for small structures, such as private docks and boathouses, that have little to no impact on navigation. This will allow the department to reallocate the necessary resources required to manage the regulatory process for major projects involving infrastructure development, energy, mining, aquaculture, and forestry.

● (1935)

Furthermore, the removal of the term “main works” will allow for the review of any work commensurate with its potential impact on navigation and not on the basis of simply the type of work in question, allowing for better oversight and regulatory control over the installation of works on Canada's waterways. New provisions will also provide a system of increased fines to act as a deterrent to non-compliance.

In closing, I'd like to say that a modernized act will help us do a much more effective job of protecting the public interest in navigable waters, while at the same time expediting the infrastructure growth and redevelopment required today. Without them, we will continue to experience delays in approval of critical infrastructure projects. Our desired result is to stimulate the economy and remove the unnecessary regulatory burden while continuing to provide the due diligence with respect to the administration of this act.

I thank you.

The Chair: Thank you for your presentation.

We'll go to questions from members.

We'll start with Mr. Volpe, for seven minutes, please.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you very much, Mr. Chairman. I'm delighted to be here. Even though I'm not a regular member of this committee, I am one of the tourists and visitors from the transport committee.

As you heard earlier, the transport committee dealt with much of the background for this, and I want to thank all the witnesses who have taken the opportunity to come forward and share some of their insights with those members of the finance committee who might not have been aware of some of them.

I want to ask a couple of brief questions.

I'm sure you will recall that the conversation went pretty well the same way. In the spring we had nine sessions, I believe, and you were one of the last to appear. I thought we gave you a pretty exhaustive opportunity to share with us what you thought we needed to know for our report.

In your reading of the amendments proposed under this format, whether you agree with the format or not, did you find things there that you didn't explain or we didn't ask in the spring?

● (1940)

Ms. Krystyn Tully: I think there were a lot of questions that day, and maybe it was my own failing in conveying the seriousness and the importance of navigation, but unfortunately, the proposed amendments we see in Bill C-10 don't seem to take into consideration any of the concerns I was trying to raise or did raise that day with the committee.

The environmental assessment process is gone. The transparency and decision-making is gone. Centralizing control and decision-making in Ottawa has been added to the act. The consultation, which we did talk about a great deal that day, never happened. We did talk about the possibility of reaching out to communities outside the Ontario region that don't have the ability to come to Ottawa on a moment's notice, and that consultation didn't happen.

Before coming tonight, I had an opportunity to speak to some other people in the community whom I know, and to my knowledge, there hasn't been any outreach to the first nations communities, to the provinces, so it concerns me that a year later a lot of the concerns we raised that day with the committee still stands.

Hon. Joseph Volpe: Let me take one of the issues, because I guess in this sense I reflect a lot of other members of Parliament. I don't speak for them, they speak for their constituencies, but I reflect other members of Parliament, I think, in the desire to do the right thing. You and others before you have raised a couple of points I'd like to ask the Transport Canada officials, if I may, but it relates to what you said.

My understanding, as we went through the entire process in the spring, was that Transport Canada and navigable waters are but one of several elements in the whole approval process and that any changes to the Navigable Waters Protection Act do not preclude, do not put aside, do not negate the obligations of Environment Canada assessments, provincial environmental agency assessments, and in fact the assessments by Fisheries and Oceans and by conservation authorities before any licences for construction are let. Is that a correct impression?

Mr. David Osbaldeston: That's correct.

Hon. Joseph Volpe: I'm going to go to Mr. Amos, who said he spoke for 2.3 million paddlers in a series of organizations.

Mr. Amos, again, I think I reflect a lot of other members of Parliament. They can all speak for themselves, but I thought we were being pretty diligent in reaching out to as many organizations as we could, including first nations communities, including provincial and municipal authorities, many of whom either sent briefs or sent witnesses. I'm a little concerned that the conversation and the presentation that you made might go into direct conflict with what Mr. Osbaldeston just said—that is, those other agencies are also there to protect interests, to protect businesses, to protect the rights of people. It would appear to me that you say this piece of legislation and the way Parliament is handling it would make a—I'm sorry if this sounds a little harsh—liar of what he just said.

● (1945)

Mr. William Amos: Thank you for the question. I certainly would never suggest that any statements are making a liar of anyone here. I think there are reasonable disagreements, however, on the impact and importance of the proposed changes.

With respect to the variety of different assessment approval processes and environmental assessment processes that may or may not be triggered, I think I was pretty clear earlier, but I'll reiterate just so that we're all on the same page.

There is only one level of government and only one process through which the effects on navigation are assessed, and that is pursuant to an approval under the Navigable Waters Protection Act, which triggers an environmental assessment. Navigation protection is something that is only ever considered through the NWPA process and then, pursuant to that, through CEAA. There are other assessment processes and other approvals. For instance, there are Fisheries Act approvals, which deal with fish habitat; there are approval processes that occur at the provincial level that may deal with waterways. However, those approval processes and those environmental assessments don't deal with navigation, so when I'm representing the paddling interests and navigation interests of the environmental community, the paddling community, the ecotourism community, these are interests that are specifically focused on the right of navigation.

The Chair: Thank you, Mr. Volpe. I'm sorry, we're over time. There will be another Liberal slot. He can share his time with you after he starts.

Monsieur Carrier.

● (1950)

The Chair: Mr. Amos.

[*Translation*]

Mr. William Amos: Thank you for you comments which were very much on point. I fully agree with you that we are making decisions about matters that are extremely important to Canada and to the people who use these navigable waters. These talks are occurring at the same time as our budget discussions, which are very delicate and highly politicized. In our opinion, we should take more time and reflect more on possible changes to the Navigable Waters Protection Act. Discussions should take place within the context of regular committee meetings and as part of the usual legislative reform process, not in conjunction with budget discussions.

I agree with you completely and I appreciate your comments.

[*English*]

The Chair: There are 30 seconds left, if someone else would like to comment.

Mr. Mattson.

Mr. Mark Mattson: As we've suggested, if it were severed from the budget bill it would benefit all Canadians, and it would be in the public interest that we take the appropriate amount of time to hear from Canadians from coast to coast to ensure that this bill achieved what Mr. Osbaldeston would like. As well, it would still protect the public interest and their right to give consent to the government before it takes these rights away or that they be infringed.

The Chair: Thank you.

We'll go now to Mr. Tweed, please.

Mr. Merv Tweed: Thank you, Mr. Chair. I'll share my time with the member for Fort Mac.

Thank you, everyone, for attending. I appreciate all the comments.

I was the chair of the transport committee that proposed the changes to the Navigable Waterways Protection Act. I want to make it clear that there were no dissenting votes on the proposals and changes to the act that were put forward. We did include a sunset clause because we felt that, like all legislation, there are challenges that have to be met at a future date. If we see deficiencies, then we certainly have the ability to make those changes.

I want to start by commenting to Mr. MacLaren that I've had the opportunity to serve provincially and on a municipal council. I would have no qualms in saying I probably have a thousand people like you in my riding in the very same situation, where a man-made ditch that serves no other purpose than to move water for four or five days in the spring is deemed a navigable water and they can do nothing with it. It hinders their ability to develop their own property and it excludes them from any other process that everyone has to go through.

As a committee, we heard from municipal, provincial, and other organizations involved in working with navigable waters. I think it was unanimous, in the reports we received from them, that these were the issues that concerned them the most and that had to be addressed by our committee. Monsieur Carrier was a very active member, and I think we all compromised a little bit to bring something forward that was amenable to most Canadians.

I want to talk to Mr. Osbaldeston. I think Mr. Volpe raised this, and I want to make it as clear as I possibly can. It's a comment we're hearing most around the table and in e-mails from people who are concerned about this issue.

Do the rights surrounding navigable waters change with any of the amendments we're proposing?

● (1955)

Mr. David Osbaldeston: No, they don't. Water that is navigated today will continue to fall under the purview of this act, as will all water in Canada.

Mr. Merv Tweed: I'd also like to ask you this, and I know it was discussed in our committee. How many projects approximately are backlogged because of this process? I'm not referring to the major projects; I'm talking about the ones you discussed in your opening comments that are being held up because of this process, that actually are not impacted by the Navigable Waterways Protection Act.

Mr. David Osbaldeston: I can't give you numbers off the top of my head. In general, though, we receive 2,500 applications a year and we continue to have 2,500 remaining from the year before, so we never catch up.

Mr. Merv Tweed: Have you had any comment made to you, or through anyone else, that would suggest the changes we are recommending would actually change the definition of the term "navigable water"?

Mr. David Osbaldeston: No.

Mr. Merv Tweed: Last, before I turn it over to Mr. Jean, I'm interested.... I think the committee had a sincere feeling that we didn't want that—I think you reflected it, and it is reflected in the minutes of our meetings—and that it was not the committee's intention to impede navigable waters. It was to improve the act so that a person like Jack MacLaren can get on with his life and do the things he wants, and municipalities can do the same things, without impacting the term or the definition of navigable waters.

Would that be a fair statement?

Mr. David Osbaldeston: That's a fair statement.

Mr. Merv Tweed: Thank you.

Mr. Jean.

The Chair: Mr. Jean, you have six minutes.

Mr. Brian Jean: Thank you, Mr. Chair.

I also sat on the committee; I was the parliamentary secretary. When I hear of fish habitat removed, the use of rivers for anglers gone, removing environmental assessment triggers, public notices gone, scientific reviews terminated, interference with the public right to navigation, it sounds like a *Twilight Zone* movie. I wasn't there for the meeting that said this and I didn't see any legislation that did. But the truth was and is that I went to every meeting, I heard from every witness, and I looked at the legislation thoroughly, as a lawyer for some 11 years litigating in the courts of Alberta.

That's another point. I'm from Alberta and I represent 30% of rural Alberta, places where people are impeded by this legislation on a constant basis. When I ran for this job in 2004, this was the number one concern. It wasn't BSE; it wasn't same-sex marriage; it was navigation and the ability to deal with things properly. I want to let you know that.

As well, I am a registered trapper, an avid hunter, and I have taught canoeing. I have canoed most of the rivers in northern Alberta and I taught canoeing for some period of time. I love canoeing and I love the outdoors, both winter and summer, and I would not ever put anything forward in any kind of legislation or proposal that would impede that in any way.

Saying that, primarily for my constituents, who vote me in at 67% every time I have an election, I want to ask a question, David, to clarify this. Will bridges, booms, dams, and causeways, which everyone here knows are the primarily named works, still be reviewed under the Navigable Waters Protection Act after the proposed amendments are passed? That is the main concern—those major works, those named works.

● (2000)

Mr. David Osbaldeston: Yes, they will. I know there is misinformation out there that, because they are named and there is talk about removal of named works, the interpretation is that therefore these obvious obstacles to navigation would not continue to be reviewed under our legislation. But that is not the case. The removal of "named" works, which is how the amendment is worded, is simply removing treating these things with any special accord and rather treating them like any other obstacle that could potentially be placed in the water in the way of navigation; that is, equitably, against the same standards, and most specifically, according to the degree of impact upon navigation. These items would definitely continue to be reviewed under the legislation and have to meet the same benchmarks as all other works placed in navigable water.

The Chair: Thank you.

If you have a very short question, you have 20 seconds.

Mr. Brian Jean: Mr. Chair, I am curious and would like to ask one more question to David.

In essence, is any environmental assessment trigger going to be removed that means there will be no environmental assessment to a project?

Mr. David Osbaldeston: I can't speak directly to the environmental assessment pieces, because I'm not the Canadian Environmental Assessment Agency—those who trigger what goes on the Annotated Law List—but that will be reviewed. I can tell you that in our strategic environmental assessment, which was done as part of our studies, the end result was that the result would be neutral—nothing lost, nothing gained.

The Chair: Thank you.

We'll go to Mr. Mulcair.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chair.

I too would like to thank the witnesses for their presentations today.

I would also like to reassure Ms. Tully; there is no need for her to apologize for not taking part in broader consultations, since no such consultations were held. She has nothing to apologize for.

[*English*]

Mr. Osbaldeston, I must start off by saying that I have the greatest respect for the civil service. Having spent more than 30 years in the public service, half of it as a civil servant, including being chairman of a large regulatory agency, and half of it as an elected official, I can say that I know the difference between the two. I don't think, Mr. Osbaldeston, that you know the difference between the two, and I say that with respect.

If you enjoy the game of politics, have the courage to put your face on the telephone poles and get yourself elected. Tonight you came into this committee and did something that none of us has ever seen before. I have never, in over 30 years, seen a civil servant come before a committee and deliver with such a purely partisan mind. When you have the temerity to come before us and say that there's nothing in here that removes environmental protection, you're simply not telling the truth. It is not true that there's a tiered approval process in here. It's a complete change in the whole regulatory structure. All the enabling provisions under this statute will be changed to give, as Ms. Tully correctly pointed out, pure discretion here in Ottawa.

Now, I don't doubt your good intentions, but I am telling you that what you told this committee about the effect of this legislation is not true.

In response to Mr. Jean—and I saw you pass a note to Mr. Jean before, and I think it's worth saying that....

Sure I'd like to see it, Mr. Jean, colleague and *confrère*. I'm a lawyer too. And I can read a statute, because I was involved in statutory drafting for a number of years.

There is nothing further from the truth than that this doesn't lessen environmental protection. An anecdote is not an argument is not a case.

In Mr. MacLaren's very colourful example he evoked the Drainage Act, which, as you know, is an Ontario provincial statute that has nothing to do with what we're discussing here today. He evoked Fisheries and Oceans, which again has nothing to do with what we're talking about here today. He also alleged that there was an anecdote from the owner of a piece of equipment that it would be Fisheries and Oceans, but we have no evidence of that whatsoever. Yet you bought that holus-bolus, and you reinforced it here before this committee. And that's wrong, because this committee is trying to deal with a statute that would deal with something that has been properly protected in this country for over 100 years. The Conservatives don't believe in environmental protection, and that's why they want to remove it.

You admit that there will be changes to the triggers for environmental assessment. That was leaked a few weeks ago. We made it public. The plan is to reduce environmental assessments as a function of the value of the infrastructure being put into place, as if the protection of a precious wetland had something to do with the value of what you put on top of it. Ten million dollars is the cut-off. If you destroy a precious wetland for infrastructure worth $9.5 million, somehow that becomes okay. It's not okay. That's why we have a Canadian Environmental Assessment Act.

Your anecdote about your North Channel Bridge makes me want to know about the effect of the exclusion of the current Navigable Waters Protection Act—we keep saying navigable waters act, but it's the Navigable Waters Protection Act. I'd love to know what the exclusion of the St. Lawrence Seaway—because it's obviously a continuity of that—has to do with your anecdote about the North Channel Bridge. Perhaps you could provide some of that in writing.

Coming here and pleading the backlog of cases as an excuse to go on and on about the more flexible process is a purely partisan political argument and has nothing to do with the facts. Saying that you're here to streamline is a purely partisan political argument that has nothing to do with the facts. Saying that financial opportunities are being lost is their line. They're elected. They put their pictures up on telephone poles and they were elected to do a partisan political job. You didn't.

Welcome to the debate, Mr. Osbaldeston. If you want to play politics, welcome to the debate.

They're right; this is a scandal, removing a hundred years of protection that Canadians have fought for. There are several signal pieces of legislation in this country we can be proud of, and this is one of them. They don't believe in it. They're removing it.

People, like some of the ones who have spoken, are trying to give themselves a little bit of leeway in their own ridings in the north by trying to say that they did what they could, and that's not what the statute did, and we brought the guy in to tell us that it wasn't the case.

● (2005)

It is the case, Mr. Osbaldeston, because only a very naïve person would believe that with the type of opening at the breaches and the enabling provisions here for coming up with rules and regulations that will allow the creation of categories—that is not a tiered approval process. That's the ability to gut the essential elements of this statute. That's what this is about, and that's why we're opposed to it, and that's why you should have been more forthcoming in your assessment before this committee. I don't agree with the fact that an officer of the civil service—*un grand comis de l'État*, as we would say in French—should be used to come in here and spin a purely partisan political line. I don't agree with that at all.

[*Translation*]

I would now like to ask Mr. Edwards if, in his opinion, the wording of the amendments to the enabling provisions for the making of regulations potentially opens the door to the all-out destruction of the protection afforded Canada's navigable waters?

[*English*]

Mr. John Edwards: I apologize. I'll have to respond in English.

I'm not a lawyer. I apologize. I'm a paddler.

Mr. Thomas Mulcair: So am I.

Mr. John Edwards: I'm also a municipal politician, by the way, so I know about roads, bridges, culverts, and beavers.

We're deeply concerned about the amendments in the act. We're deeply concerned about not being consulted. I'm sorry if I'm not answering your question directly.

Mr. Thomas Mulcair: It's good.

Mr. John Edwards: We do serve on the standing committee on recreational boating, which deals with safety issues. Those are our primary concerns with regard to this legislation.

I feel somewhat caught between two railway trains. Over there, there's an opinion and suggestions that there's no change, yet everything I've read suggests that there are substantial changes. I feel there's an enormous lack of communication. As I stated in my initial statement, we do wish to improve the legislation, if at all possible, but we do need to be part of that process.

Mr. Thomas Mulcair: I can only tell you that we will be fighting hard to have it decoupled from Bill C-10. It deserves another analysis.

Go ahead, Mr. Mattson.

The Chair: Thank you.

Mr. Mattson, do you want to respond very briefly?

Mr. Mark Mattson: Thank you, Mr. Chairman.

Very briefly, like you, I've been an environmental lawyer for 20 years. I've worked at 50, 60, or 70 hearings. I've also done criminal, parole, and prison law, and immigration law. There's always work that goes with getting approvals.

Mr. MacLaren could probably phone me up and I could help him with a few pictures and a call to Transport Canada. We could probably resolve his problem, along with the other thousands. You don't need to overthrow the right in Canada that government—not the politicians but government—go to the public to get their consent when navigable rights get taken away or when they're infringed upon. That's what the Navigable Waters Protection Act currently gives Canadians.

Mr. Osbaldeston may be correct in that he will still consider all the changes, but his consideration and that of the Government of Canada is much different from that where you have to go to the public in order to get that consent. That's the difference in the bill: it turns a right into a discretionary decision.

● (2010)

The Chair: Thank you.

Do you have a point of order, Mr. Storseth?

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chair.

Out of respect for my colleague Mr. Mulcair, I waited until the end of his tirade to bring this up. I do believe that under Marleau and Montpetit the House of Commons and parliamentarians are guided by a code of language, both in the House and in all adjuncts of the parliamentary precinct. I believe we also extend that to the witnesses we bring before us.

I should think that we would have a common code of decency to not be calling.... I do believe it's unparliamentary to call anybody who comes before us liars or to accuse them of such things. I do wish this committee to continue in a respectful manner. We can discuss the different ideological viewpoints, but this is a piece of legislation that's good for all the people in this country, particularly in my riding.

Thank you.

Mr. Thomas Mulcair: I have a point of order, Mr. Chair.

The Chair: On the same point of order, Mr. Mulcair.

Mr. Thomas Mulcair: Thank you, Mr. Chairman.

What I said was that the affirmations made by Mr. Osbaldeston were not true. That is a question of fact, and I maintain it, and I will not withdraw it.

The Chair: Yes, I would certainly agree with Mr. Storseth that we want to be respectful and rule by decorum, but I did not hear Mr. Mulcair call Mr. Osbaldeston a liar. That was my hearing of the case.

I know this is a very tense subject, and obviously there are strong feelings on both sides, but I would encourage him to continue to be respectful.

We'll go to Mr. Volpe now.

Hon. Joseph Volpe: Thank you very much, Mr. Chairman.

I really didn't have a speech to make, but I wanted to pursue the line of questioning I had before, if you'll forgive the diversion back to a different approach.

I was more interested in what Mr. Amos and Mr. Edwards said. Again, I go back to what I indicated earlier on, without any false humility. I think I am reflective of the people who actually worked on the committee to try to get to the heart of the matter. I think Ms. Tully, who came as one of the witnesses, would probably say that members around the table were really trying to come up with an appropriate report. Whether they succeeded is another matter.

There are two things I've heard that caused me some concern. One is that the language suggests that parliamentarians are poised to take away rights of Canadians without having consulted with them. I'm concerned because it puts me in the position of someone who is ready to take away a right that's been enjoyed. I'm not in government, so I'll leave that responsibility to the people on the other side.

We do represent Canadians and we did go through a consultation process. I'm not sure it's very helpful to think in terms of whether rights were being removed.

I want to ask that question again, maybe to Mr. Amos and Mr. Osbaldeston, because I asked this question once before when representatives from Fisheries and Oceans, Environment Canada, the provinces of Alberta, Saskatchewan, Ontario, and I believe, Newfoundland and Labrador—although I may be wrong on that one—and the various municipalities and organizations of municipalities came forward, and that is this. If Transport Canada receives a report that suggested it could make changes to the Navigable Waters Protection Act consistent with what is now on the table, does that in any way derogate from the authority of Environment Canada, Fisheries and Oceans, and the other provinces to conduct their studies and come up with a negative response?

● (2015)

Mr. David Osbaldeston: No, not in any way.

Hon. Joseph Volpe: And if it does not, then Mr. Amos—assuming that Mr. Osbaldeston is giving us a perception that reflects reality—if those subsequent assessments are negative, does that take away Canadians' right to enjoy the navigable waters in the way they currently do?

Mr. William Amos: Thanks for the question. I'll try to—

Hon. Joseph Volpe: Is it yes or no?

Mr. William Amos: I think it does incrementally take away rights of navigation, and I'll explain how.

Hon. Joseph Volpe: If those other four agencies do not agree with the proposal on the table and issue a licence that alters the use of any property adjacent to those waters, how does that take away the right of a Canadian to enjoy something that was being enjoyed before those assessments went into place?

For the lawyers present around the table, if there is a due process that is undergone and it protects the interests of everybody along the way, why is that a taking away of rights?

Mr. William Amos: Simply put, because the processes that will remain, that may, for instance, stop a given project—say a bridge—whether or not they have approved or not approved of that given infrastructure project, will not have considered navigation. So there may be environmental assessment processes or approval processes that do consider matters other than navigation, and they may approve a project, not having considered navigation.

This is the critical point to understand with the proposed amendments. There are provisions for ministerial exemptions of works and waterways. Pursuant to these amendments, if the transport minister decides at his or her discretion, without any parliamentary oversight, without any prior consultation with other Canadians, that certain works—call it a small dam or a small culvert or certain waterways, a stream, five to ten metres wide—or waterways are to be exempted, there will be no approval process under the Navigable Waters Protection Act and there will be no environmental assessment process. That means navigation will not be considered.

Hon. Joseph Volpe: Well, Mr. Amos, there were other lawyers who came before the committee in the spring who disagreed with that assessment, but that's okay. That's the reason we go through these.

The Chair: Mr. Volpe, this will be your last question.

Hon. Joseph Volpe: Sure, and it goes to Mr. Mattson actually, because under this concept of rights being protected in stages, the Minister of Transport, as we were advised, doesn't make decisions for the Minister of the Environment and doesn't make decisions for the jurisdictions at the provincial level, which must also provide their consent before a layer of any right might be altered.

So do you still hold that the Minister of Transport, by extension from your argument, in Canada will dictate all rights that flow from the authority of the Minister of the Environment, various ministers of the environment, and Fisheries and Oceans?

The Chair: Mr. Mattson.

Mr. Mark Mattson: I wouldn't be here tonight and wouldn't have come up on such short notice if I didn't think that if the changes go ahead, they would take away something so valuable in Canada.

What Mr. Amos says is 100% right. You know, when you change something with the Navigable Waters Protection Act, which really wasn't giving Canadians the right to navigate their waters; it was just putting into words, into statute, that which Canadians had in common law.... So to take that away because government doesn't want to do the work any longer, or because they want to move faster and they don't have the resources—that's wrong. This is something where the decision should not be made in Ottawa or by the Minister of Transport. The tool is that every single time you go to block a river, put a dam or a causeway in, you need to go to the people who are affected and seek their consent and you need to do the research to provide to those people first.

To do otherwise would leave us with two-tier environmentalism. It wouldn't trigger environmental assessments under the Canadian Environmental Assessment Act anymore, and ultimately it would leave protection of our waters to the people who are most powerful, who have the most money or the most influence. And those...it may be one or two people in the middle of a 200 or 300 square kilometre empty space, and they'll be lost. And those waters might be what really makes them feel Canadian and might make them really feel they're part of a special country.

That's why this act is so important, and that move from a right to a discretionary right is probably one of the most serious and fundamental shifts in law you can have.

● (2020)

The Chair: Thank you. Thank you, Mr. Volpe.

We'll go to Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Thank you, Mr. Chair. Good evening to all of the witnesses.

I too listened very attentively to Mr. Osbaldeston's opening remarks.

Mr. Osbaldeston, you used a word that bothers me quite a bit. You referred to this as a "modernized" act by way of justifying your support for this bill. To my mind, something modernized is the opposite of something old, something archaic. What's archaic is that there were no consultations held in the past, and no Department of the Environment. But mainly, lobby groups did not voice overly strong objections. There were no ecotourism organizations like we have today. People did not use the environment or our navigable waterways like they do today. There were no canoe-kayak federations. They did not exist. That was in the past. People used nature anyway they liked. Today, in a contemporary, modern world, people have found very different ways to use nature. These people represent modern times.

However, it is entirely inappropriate, in my estimation to use the word "modernized" in connection with a bill that disregards certain realities and places important discretionary authority in the hands of one minister, of one individual, who could eventually disregard major environmental problems for the sake of building infrastructures. I truly regret that you have taken a stand in favour of this bill that...Earlier, my colleague Mr. Carrier referred to it as a "joke".

I have a question for you, sir. Do you often have occasion to testify before the Finance Committee in support of a bill that falls within the purview of the Department of Transport? Has this happened often?

[*English*]

Mr. David Osbaldeston: No, sir.

[*Translation*]

Mr. Jean-Yves Laforest: So then, it's never happened to you before. You'll agree that this is a first for you. This is the first time that the Conservative government has decided, with the Liberals' support precisely because of its minority standing, to rely on this support to include in a budget bills that have nothing whatsoever to do with the budget process and that, in some respects, go against the process already initiated at the Department of Transport. It is all quite improper.

I have no further comments. Is there anything more you would like to say? When you say this is a first for you, I find that worrisome. Thank you.

[*English*]

Mr. David Osbaldeston: No, sir, I don't have any comments. I am following the process that's put before me.

[*Translation*]

Mr. Jean-Yves Laforest: Thank you, Mr. Chair. I have nothing further to add.

[*English*]

The Chair: Thank you.

We'll go to Ms. Gallant, please.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): This is through you, Mr. Chair, to Mr. MacLaren.

How old were you when you dug that ditch by hand?

● (2025)

Mr. Jack MacLaren: I was probably 12 to 16 years old.

Mrs. Cheryl Gallant: And how old are you now?

Mr. Jack MacLaren: I'm 84.

Mrs. Cheryl Gallant: That's almost the lifetime of a person. Maybe to a young person, an inspector coming by, for all purposes that would look like a natural creek.

Mr. Jack MacLaren: For someone, yes, it would look like a creek. But it was dug out to this mudhole, shall we say, so that they could crop the land.

Mrs. Cheryl Gallant: How many kilometres or miles is it from your farm in Renfrew to Prescott, where the inspector came from?

Mr. Jack MacLaren: It is roughly 120 to 150 miles.

Mrs. Cheryl Gallant: First of all, how many canoes or kayakers have used your ditch for that sport?

Mr. Jack MacLaren: We haven't had any that I could see. They would probably be very little.

Mrs. Cheryl Gallant: In Ontario, the definition of a navigable waterway, in practice, is extrapolated to include any collection of water. That's what we're seeing here. So as a consequence of this holdup, your production, your apple orchard, has been held up.

Mr. Jack MacLaren: I have a deal with the federal and provincial governments for a take-out and replant of an orchard, which will run to roughly $40,000, and that has been put on hold. Now I don't qualify because I had to get these—I nearly said clowns—gentlemen in to look at it. I would presume they didn't really know what they were looking at, except that an indent in the ground is called a creek. I think that's what this one man decided. He also told me that I did not own the water, which totally upset me because I had just drunk two glasses of it.

Mrs. Cheryl Gallant: To you, then, it's almost like a make-work project for bureaucrats, and what these proposed changes will mean to you is that you'll have the freedom to be a responsible steward of your own private property without a parade of government officials.

Mr. Jack MacLaren: That's exactly what I want to be able to do, to run my own property and my orchard and hopefully make a profit.

I have it figured out here that the mileage added.... The gentleman with the high hoe would be coming past my place—I would ask him to come into my farm, and he would have to come about 200 yards—when he's going by on the way home some night. It would take about an hour and a half to dig this out.

By doing what they've done—and I still don't have permission—I have it figured out that from Natural Resources in Pembroke and from Prescott, the total mileage that has been added to this would be 1,060 kilometres, whereas it would have been my telephone call and the gentleman coming in with his high hoe and truck on his way home.

Mrs. Cheryl Gallant: So about an hour and a half worth of work has stretched into over a year, not to mention the expense to you, but also to the taxpayer in general in paying the mileage and the days of work for these inspectors.

Mr. Jack MacLaren: That's right, and the taxpayers—all these people—are paying these two gentlemen who came to our place, whereas it could have been done.... That could have been dropped. I can handle it myself. I've survived for 84 years, so I must be doing something right. Basically I am in an oddball spot here. I am not a lawyer; I am a farmer. I am a seventh-generation Canadian, but I have one thing: my grandfather came to Canada and laid stones on the Rideau Canal, which goes through Ottawa.

Mrs. Cheryl Gallant: Thank you.

My next question is to the Department of Transport. Whitewater rafting, the World Cup of Freestyle Kayaking, and the internationally renowned birchbark canoe by the Algonquins of Pikwàkanagàn are all part and parcel of the Ottawa River, right down here. What is in this legislation that is going to stop my canoeists, my whitewater rafting industry, my kayakers, and my fishermen from enjoying that river?

Mr. David Osbaldeston: Nothing.

The Chair: Thank you, colleagues.

Thank you to all the witnesses who came before us and made their presentations and answered our questions. We appreciate your time here this evening.

Members, we will suspend for one or two minutes and bring the next set of witnesses forward.

● (Pause)

●

● (2035)

The Chair: We're starting the final panel for 8:30 to 10 p.m. with respect to our hearings on the budget implementation act.

We have six organizations with us, presenting as five groups. We have the Fédération des travailleurs et travailleuses du Québec, the Association of Justice Counsel, and the Federally Regulated Employers - Transportation and Communications. And we have two groups who I understand are presenting as one, Option consommateurs and the Public Interest Advocacy Centre. Finally, we have the Canadian Association of Professional Employees.

I ask each organization to do a five-minute opening statement in that order, and then we will go to questions from members.

We'll start with the Fédération des travailleurs et travailleuses du Québec. Are they here? No.

Then let's start with the Association of Justice Counsel.

Mr. Patrick Jetté (President, Association of Justice Counsel): Mr. Chairman, members of the committee,

● (2040)

[*Translation*]

The Association of Justice Counsel is pleased to have the opportunity to submit its views concerning Bill C-10.

[*English*]

In the next few minutes, I will briefly describe our concerns with this legislation, and then I will be pleased to answer your questions.

Our association represents over 2,500 lawyers across the country who are employed by the federal government in the Department of Justice, the Public Prosecution Service of Canada, and in federal agencies. They perform critical tasks in many areas, including prosecution, constitutional law, consumer and regulatory protection, national security, immigration, and commercial law.

In 2005 the Government of Canada extended the right of collective bargaining to the federal government lawyers, and in 2006 we began to negotiate our first collective agreement with the Treasury Board. Three years later, these negotiations have not led to a successful conclusion. As a result, federal lawyers have not had a salary increase since April 1, 2005, and our salaries have been substantially behind those of our provincial counterparts. Our comparative salary levels now rank seventh in the country, even though they used to be either first or second. We're now behind those of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, and Nova Scotia.

To provide just one example of the disparity, federal government lawyers today earn between 40% and 60% less than their Ontario provincial counterparts. The salary gap is even more pronounced in comparison with our private sector counterparts, with whom we regularly appear in court in representing the interests of the Government of Canada.

[*Translation*]

The ongoing failure to redress this profound and growing salary disparity created by Bill C-10, the Expenditure Restraint Act, has given rise to three very serious issues for the administration of justice in Canada.

First, the federal government is having an increasingly difficult time retaining its lawyers. Simply put, our lawyers are leaving their jobs and going elsewhere, that is to say they are either retiring as soon as they can, or going to work for one of the provincial governments, or are simply going into private practice. It's a simple matter for them to cross the street and go work for a provincial government and in the process, earn thousands more a year doing the exact same kind of work they were doing for the federal government.

[*English*]

Second, the disparity in salaries is thoroughly hampering the ability of the federal government to recruit top-notch legal talent to replace those who are leaving.

In some locations and fields of expertise, the lack of qualified lawyers has reached critical levels. For example, in the city of Calgary, which includes the Prime Minister's own riding, the Public Prosecution Service of Canada has lost more than half its lawyers, prosecutors, and has not been able to replace them. It is the same thing in British Columbia, in Ontario, and in other provinces.

Third, as a result of the long-standing salary disparity facing federal government lawyers, morale is at an all-time low.

All these challenges have been documented publicly in the recent annual reports of the Public Prosecution Service and the Department of Justice, and if Bill C-10 passes in its current form, none of these challenges will be addressed.

In addition, federal lawyers will be singled out not only as the only group deprived of the process for negotiating their first collective agreement, but also as the only group not to have a negotiated or arbitrated salary increase for 2006-07.

We must contrast treatment of the AJC with that of another employment group in a similar situation. I am talking here about the border guards who were granted a salary increase of 19.5% three days before.

Finally, we respectfully urge the members of this committee to seriously consider the constitutionality of Bill C-10, especially in its specific and disproportionate impact on lawyers.

Thank you.

● (2045)

The Chair: I think we'll go back to you then, Monsieur Laliberté, and have your presentation. *Cinq minutes*.

[*Translation*]

Mr. Pierre Laliberté (Economist , Fédération des travailleurs et travailleuses du Québec): Thank you, Mr. Chair.

I would like to thank the committee for this opportunity to present our views on Canada's budget priorities. It would have been nice to do this before the budget was tabled, but nevertheless, just having the opportunity to do so is appreciated.

To our way of thinking, the budget that was tabled contains some interesting and worthwhile initiatives, but overall, it falls rather short.

We feel that first and foremost, the budget should have focused on ways of beefing up the employment insurance program, given the critical importance of this program during times of crisis. Moreover, from a macroeconomic standpoint, this program has the biggest repercussions. Since the program was reformed some fifteen years ago, it has never been tested in a real recession.

EI reform was, in our estimation, the key component of a recovery program. So then, we were deeply disappointed when we saw the budget. While it does provide for one improvement in that it calls for an extension of the benefit period, it fails to provide for any kind of notable improvements in areas that we deem equally important.

Even more disappointing to us is the fact that a considerable sum of money is being spent nevertheless in other areas. In some cases, this increased spending is admittedly justified. However, we feel that employment insurance must be considered a component of any recovery program.

During a recession, even a typical one, market indicators begin to fall and the unemployment rate begins to rise. As a rule, it takes six months for the economy to show any signs of a recovery and generally speaking, it takes at least two years before the unemployment rate returns to its pre-recession level. Assuming that the current recession will be deeper, there is every reason to believe that the unemployment problem is here to stay for awhile. In our opinion, that was a critical consideration.

On another note, the government did make an effort with respect to professional training and this effort was duly noted. However, we had also called upon the government to bring in special measures targeting older workers who will not be able to find new jobs, especially during this downturn. This type of program would have helped them bridge the gap between the end of their employment and retirement programs.

The program for older workers was cancelled under the Liberal government. Given the current state of the economy, it would have been the right thing for the government to do to reinstate this program, especially since it is not that costly, in the grand scheme of things. If our calculations are correct, the cost would be somewhere in the neighbourhood of $70 million.

The amounts announced for infrastructure spending are interesting. However, an order to buy Canadian appears to be missing from the budget.

The Americans have no qualms about imposing these restrictions, and it is all quite legal for them to do so under the WTO and NAFTA. Canada is a little like a boy scout that doesn't quite understand how things work in the real world.

No less than $100 billion will be spent on infrastructure in Canada over the next few years. There is nothing in the budget promoting Canadian content and Canadian businesses. Considering the potential spinoffs, this makes no sense at all to us.

However, the budget continues to contain measures respecting public-private partnerships which, in this current economic climate, only delay project implementation. This too makes no sense to us.

● (2050)

I don't have time to broach the issue of pay equity at length. It would simply like to add my voice to those of my union brothers and sisters who have stated that budget legislation is perhaps not the appropriate vehicle for discussing pay equity or finding solutions to this problem at the federal level. We fervently hope that the government will reconsider its decision and table separate parallel legislation.

Thank you very much.

[*English*]

The Chair: *Merci beaucoup.*

Mr. Farrell, please go ahead with your presentation.

Mr. John Farrell (Executive Director, Federally Regulated Employers - Transportation and Communication (FETCO)): Thank you very much.

I am going to ask David Olsen, who is assistant general counsel for Canada Post, to present our position. He is also a member of FETCO and has been involved in employment equity matters for many years.

David, I'll turn it over to you.

Mr. David Olsen (Assistant General Counsel, Legal Affairs, Canada Post Corporation, Federally Regulated Employers - Transportation and Communication (FETCO)): Thank you.

I should state that although I am counsel to one of the members of FETCO, I am here as a representative of FETCO and not on behalf of Canada Post. Thank you.

FETCO: what does it stand for? Federally Regulated Employers—Transportation and Communication. We are an organization of most of the major employers and employer groups in transportation and communication under federal jurisdiction. A brief will be submitted. In appendix A of that brief are listed all the members of the organization: Canada Post, CBC, the railways, the ports, the airlines, and so on.

FETCO members employ approximately 586,000 workers, 212,000 of whom are unionized. We represent approximately two-thirds of the unionized workforce under federal jurisdiction. We are pleased to be invited here today to give our preliminary views on the proposed Public Sector Equitable Compensation Act.

Our members have extensive experience with the current section 11 of the present Canadian Human Rights Act. A number of us have been deeply involved in equal pay for work of equal value issues, assessments, and litigation over decades. It is without a doubt a deeply important and complex issue. However, there are certain flaws in the current section 11 of the Canadian Human Rights Act that have generally been unhelpful to parties in resolving equal pay disputes, and we would like to comment on that.

The proposed Public Sector Equitable Compensation Act, while it does not apply to our members in the federally regulated private sector, contains important new principles and sound operative provisions that we believe will improve the ability of employers and unions in the federal public sector to assess and implement equal pay or equitable compensation for men and women in a manner that is pragmatic and fair.

This legislation makes sense to our members because, one, it integrates equitable compensation, equal pay for work of equal value, into the collective bargaining process; two, it requires that both employers and unions share responsibility for equitable compensation or pay equity, not the employer alone; and three, more importantly for those of us who've been involved in protracted litigation under section 11 of the Canadian Human Rights Act, it provides a more efficient, effective, and equitable problem-solving and dispute resolution procedure.

The heart of the issue for FETCO has always been the fact that equal pay for work of equal value must be integrated into the collective bargaining process. Like equal pay for work of equal value, freedom of association for employees is accorded the status of being a fundamental human right, and both are considered sacrosanct in our society. But that does not mean, in our view, that they cannot be addressed together. If anything, they must be addressed together in order for both to be balanced and achieved.

The current section 11 of the Canadian Human Rights Act articulates only the general principle that men and women who are performing work of equal value must receive equal pay. Other than articulating the general principle, it has been left to the courts and tribunal. In our view, this vagary of section 11 has been routinely and strategically leveraged by trade unions as a means by which to effectively reopen negotiated collective agreements. It's a second kick, as it were, that flies in the face of the fundamental sanctity of collective bargaining. This is fair in a non-unionized environment where the employer alone is responsible for setting the wage package and terms and conditions of employment, but in the unionized sector it is both the employer and the trade union together that are responsible for making a bilateral decision about terms and conditions of employment. And I dare say—in my experience, anyway—it is largely the trade union that makes decisions about how that wage package is to be allocated and distributed, and so it's the collective bargaining parties that must also be responsible for implementing pay equity.

● (2055)

We elaborate more fully in our brief on these issues and the mischief of the current legislation. FETCO commissioned a comprehensive study on the issue when we appeared before the Bilson task force; and Professor Paul Weiler, a noted Canadian academic, labour lawyer, and jurist, prepared a paper. It has also been provided to you.

In sum, if I just could—

The Chair: I'm sorry, Mr. Olsen, we'll have to leave that for questions. I'm sorry about that.

Mr. David Olsen: Thank you so much.

The Chair: My understanding is that the next two groups will be presenting together. Is that correct? Yes? Okay.

Ms. Bose.

[*Translation*]

Mrs. Anu Bose (Head, Ottawa Office, Option consommateurs): Good evening.

Thank you, Mr. Chair, members of the Standing Committee on Finance, Mr. Clerk of the Committee and the staff of the committee, for inviting me to appear before you this evening to discuss Part 12 of Bill C-10, that is the proposed amendments to the Competition Act.

My name is Anu Bose and I am in charge of the Ottawa office of Option consommateurs, an organization that is headquartered in Montreal. With me are Michael Janigan, Executive Director and General Counsel for the Public Interest Advocacy Centre in Ottawa.

For over three decades now, our two organizations have been working to represent the interests of consumers in the area of regulated trade. Mr. Janigan has already testified before the Industry Committee on connection with the former Bill C-19 tabled during the 38th Parliament. This bill to amend the Competition Act was never adopted.

[*English*]

We would first note that while the proposed amendments are quite comprehensive, they have certainly been the subject of considerable past discussion amongst stakeholders and, in our opinion, represent a fairly balanced approach to the necessary refinements to the act.

Take, for example, the issue of the amendments that complete the reform of misleading advertising or deceptive marketing that has been the consensus for over two decades. These amendments help the competition authorities address this abuse in an economic and administrative fashion.

In the view of Option consommateurs, this package of amendments places appropriate emphasis on the importance of deterring anti-competitive conduct, particularly in the current difficult economic and financial environment that all Canadians are experiencing.

I'm asking Michael Janigan to give some additional comments on the importance of these amendments.

● (2100)

Mr. Michael Janigan (Executive Director and General Counsel, Public Interest Advocacy Centre): Thank you, Mr. Chair.

It is essential that the committee understand that these amendments are designed to make markets work better and to protect the legitimate interests of consumers and suppliers in open markets. The practices that are being deterred involve conduct that subverts the operation of a competitive market and prevents the existence of an informed market of consumers, as well as the ability of suppliers to challenge dominant players with new products and services.

When some of these changes were brought forward in Bill C-19 in 2005, there were some vociferous protests from some of the larger business players concerning the potential burdens that could be imposed upon them. If a protest occurs again, it's important that these submissions be adjudicated on their merits, not on the basis that they represent the views of all non-governmental stakeholders.

For example, you won't be hearing from the independent business person who has used the family assets to finance a new business, only to see it crushed by the actions of suppliers of the new business instigated by a market incumbent. You may read about a scam luring shoppers to purchase a wonder product that is misrepresented and misdescribed, but the pensioner who has cut back on necessities because she fell for the scam won't be here to tell you that, as some have suggested. What happened to her is an acceptable risk that allows for more creative advertising to take place. And you won't hear from parties who complain about increases to maximum penalties, that the existence of dollar amounts sufficiently robust to deter the largest of businesses from breaching the act will probably prevent more bureau files from being opened because of business self-policing to avoid such sanctions.

But it is of the highest importance that you understand that deterring anti-competitive conduct, as proposed here, is not the heavy hand of government in operation; instead, it is supportive of open markets and less regulation. The fact is that a lot of money can be made by misleading the public or unfairly stacking the deck against competitors. Unless you have the tools at hand, as this act promises, to prevent such conduct from being rewarded, you are allowing three unfortunate things to happen: you are preventing informed choice and possible innovation, you are enabling inefficiency in the delivery of that product and service, and you are ensuring that incumbents have little incentive to become more productive.

As a final matter, Dr. Bose will address a small amendment of concern to Quebec consumer organizations.

[*Translation*]

Mrs. Anu Bose: In the future, instead of a class action suit filed in provincial court, it is likely that the new procedures set out in the bill will be applied.

We are proposing that the clause in the former Bill C-19 be inserted immediately before clause 74.19 and that clause 74.19 be subsequently renumbered *[Editor's note: inaudible]*. That way, Quebec consumers would still have the right to file class action suits and this right will henceforth be extended to all Canadian consumers.

Thank you. We would be happy to answer your questions.

[*English*]

The Chair: *Merci.*

We'll now go to our final group, the Canadian Association of Professional Employees.

[*Translation*]

Mr. Claude Poirier (President, Canadian Association of Professional Employees): Thank you, Mr. Chair.

CAPE represents 12,000 Canadian public servants, some of whom you may already know very well. They include the Library of Parliament analysts, research officers, translators and interpreters working on the Hill and, last but by no means least, the economists and political analysts who advise you.

Allow to briefly review the situation for you. Approximately 10 years ago, Treasury Board decided to reduce the number of groups with which the government negotiates agreements. The recommendation was that the number of professional groups, anywhere from 65 to 70 at the time, be reduced to 25 or 30. Bargaining agents like CAPE participated in the exercise in good faith, and some groups did merge. The economists and other professionals represented by CAPE were faced with a fait accompli, namely the creation of a new group, the EC group. No one knew exactly what lay in store, but the group was composed notably of economists and sociologists.

To facilitate the process, it was suggested that a new classification be created. The general classification standard that the government was considering at the time did not apply, for a variety of reasons, So then, to facilitate the process, salary scales were merged to create a single pay scale, with different levels, for all of the employees in the group. The final phase of the process—and all parties at the table clearly agreed on this—was the negotiation of new pay scales. That was supposed to have happened in 2005-2006. Unfortunately, work on the new EC classification standard was not far enough along to allow for the negotiation of the new pay scales at that time. Consequently, the union signed a one-year collective agreement. We were given a formal commitment that during the next round of bargaining, new pay scales would be negotiated.

In the fall of 2008, the government presented a final offer to the union, one that was just recently accepted by our members, on the understanding still that the pay conversion issue would eventually be resolved. Unfortunately, when we saw Bill C-10, in particular Part 10, we realized that there had been one exception made, which my colleague alluded to earlier. Several members of the Canada Border Services Agency were able to benefit from pay conversion, whereas our members who, while they may not be protecting our borders, nevertheless provide valuable services to the Canadian government, have been overlooked. A classification conversion occurs only once during a person's career. Our members have been waiting for this day for 15 or 20 years, and the next opportunity won't likely come along for another 20 or 30 years. Our members won't see this during the course of their career. This was their last chance.

Given that the legislation provides an exception for the border services group, we would like to recommend to you that, for the sake of a healthy bargaining process, a short five-line clause be added to the text of the bill. It follows the exact same model as the exception provided for employees of the Canada Border Services Agency and would allow the negotiation of pay conversion for our group members to move forward in a dignified manner.

Thank you very much and good evening.

● (2105)

[*English*]

The Chair: *Merci beaucoup.*

We'll now begin with questions from members. We will start with Mr. McKay, please.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, witnesses.

A number of you are opening up a window on some rather unhappy employer-employee relationships, and the government appears to have chosen a route with a sledgehammer to eliminate a number of problems right up front. Mind you, I do have some problems with economists being represented here. They got it so wrong in the past year that maybe they should be punished for an entire lifetime or career.

But let me start with another favourite group, namely the lawyers. You have a very legitimate dispute with the Government of Canada. I completely take your point that your pay relationships are certainly much less than your provincial cousins and much less than your private sector counterparts, although I'm not sure it's a good time to go into private practice in law, given the current economic circumstances.

So the question here really is this. Aside from a complete exemption from Bill C-10, what is the other alternative in terms of solving your dispute? I understand that for the last three years you've been negotiating, negotiating, negotiating, but it doesn't seem to have gone anywhere. So what are the alternatives?

● (2110)

Mr. Patrick Jetté: We have the right to negotiate, and that right is protected by the charter. So anything other than negotiations would be less than what the Charter of Rights gives us.

What we are looking for is exactly that, the exemption, just like the border agents got. They got an exemption also for the deal they had negotiated three days before the economic update was tabled.

Hon. John McKay: Did they get an exemption or did they just get lucky?

Mr. Patrick Jetté: No. I doubt they got lucky, because it's clear in the act. And it's clear in the act that the AJC and our members are being targeted.

We are the only ones with the year 2006-07 on the radar screen. No one else is like that in the federal government. So why target the AJC? Its 2,500 members are specifically targeted because of that disposition.

Besides being targeted, the year 2006-07 was not in the economic update filed back in 2008. It was not even in the budget that was filed in January, but all of a sudden it appears in Bill C-10. So we can ask questions about that, about the AJC and our members being targeted unfairly by that legislation.

Hon. John McKay: Okay. Thank you.

This question is to Ms. Bose and Mr. Janigan.

We had representations earlier in the day from Mr. Beauchamp of the Canadian Real Estate Association. His argument was that removing the undue lessening of competition requirement would require that the resulting provisions be overly broad. Without the qualification of "undue", a very wide range of agreements would fall within the scope of the offence. His point was that he liked the legislation the way it currently is; that it is almost impossible to prove undue restriction in competition, leave it as it is. If you change it, then you'll catch a whole bunch of unintended consequences.

What's your response to Mr. Beauchamp's position?

Mr. Michael Janigan: I think, first of all, the bureau has to be commended for listening to the effective consensus associated with this, that in fact what we really need is a division of matters into per se offences, which are prosecutable by criminal law and basically represent clear attempts to try to frustrate the Competition Act, and the civil side of things, which look to the anti-competitive effect of the actions and treat it as a civil matter and treat it as an economic matter and attempt to allocate it in accordance with general economic principles.

I think the consensus previous to this has been that the provisions of the act were almost unenforceable because of the presence of the "undue" section. And I think while it might be fair that some industry players may have preferred the old section of the act, primarily because it was toothless, there are undoubtedly players within the business community—people who are prepared to invest, people who are prepared to set up businesses, people who are prepared to do things—who will be very pleased by this kind of action, because it will prevent incumbents from acting in a way that frustrates their attempts to deal with it.

Hon. John McKay: He seems to be concerned about real estate agents and brokers in a given region setting fees and schedules and commissions amongst themselves, which on the face of it seems to be restrictive of trade. Do you think his concern is legitimate?

Mr. Michael Janigan: No, I don't. I think there are a number of different exemptions in the act, particularly related to efficiency, for example. They are probably more generous than I would have drafted and would allow the competition tribunal, for example, to look carefully at what the intent of any agreement is, whether or not it is beneficial across the board and whether or not it brings efficiency into the process. And if it is anti-competitive, if it has an anti-competitive effect, it will be struck down. That may be troublesome for that industry, but over the whole course of economic life it's helpful.

● (2115)

The Chair: Thank you, Mr. McKay.

Mr. Laforest.

[*Translation*]

Mr. Jean-Yves Laforest: Thank you, Mr. Chair. Good evening to all of our witnesses.

I have specific question for Mr. Laliberté. You represent the members of the Fédération des travailleurs et travailleuses du Québec, the vast majority of whom live in Quebec. You did not talk about this, but sweeping measures to help Ontario's automobile industry were announced in the budget. A total of $2.7 billion has been committed, including loan guarantees for the auto industry. However, Quebec, as we know, is virtually devoid of an auto industry, except for a handful of subcontractors.

However, the province is home to one industry—the forestry industry—that has been in very dire straits since 2005. As it so happens, many members of your federation are employed by forest product processing companies. The budget commits only $170 million for Canada's entire forestry industry, and the Conservative government stubbornly insists that because of the softwood lumber agreement, it cannot provide any loan guarantees, which isn't true. It isn't true, because the Quebec government has in fact provided such guarantees through Investissement Québec to support businesses. Given the size of the stimulus package for the auto industry, do you not think that the situation is more than a little unfair to the workers you represent?

Mr. Pierre Laliberté: You are quite right to point out the lack of diligence, as far as this situation is concerned. The crisis in the forestry industry is not a Quebec crisis, but rather a national crisis. As you correctly pointed out, the alarm bells have been sounding for several years and it was clear that in Quebec in particular, there were problems with outdated equipment. Without question, loan guarantees could have been of invaluable assistance. You are right. As a union, this was one of our demands, in order to...

Mr. Jean-Yves Laforest: ...protect jobs.

Mr. Pierre Laliberté: Absolutely. Also, in cases where there was no other choice but to close a processing plant, we demanded some assistance to see people through the transition period.

This brings me back to POWA. It's somewhat disconcerting to realize that the government has no game plan. Even in the case of the auto industry, we get the impression that everything is a little vague. The same is true when it comes to ownership. There are virtually no Canadian-owned forestry companies left anymore. The same can be said of metal and mining sector companies. While it's upsetting that the Montreal Exchange is moving to Toronto, fewer companies are trading on the TSX because companies are no longer operating in Canada. I think we have a problem here.

Philosophically speaking, before the current government took office, the situation was neglected. It is time to ask ourselves some serious questions, such as: Do we really want a forestry industry that produces value added products? What type of equipment do we want? How do we compare? What is our strategy?

There is another important factor to consider. Can our manufacturing sector survive dollar parity? That is what we can expect to see after the recovery takes hold. Many Canadian industries are in danger of being killed by our petro-currency. These are some major questions that never seem to be addressed. If the government doesn't move to set up forums to discuss these issues, we have to wonder who will take the initiative.

● (2120)

Mr. Jean-Yves Laforest: Since I don't have a lot of time, I will simply say that had broader consultations taken place, given what you have just said, it would have been very interesting to discuss the issues that you identified.

I have a question for Mr. Poirier. I didn't quite understand you when you said that this was a once-in-a-lifetime opportunity that won't come along again for 20 years.

Mr. Claude Poirier: Historically, whenever a classification conversion occurs in the Public Service, there is no need to repeat the exercise every five years. The conversion is done once. The value of the work, the position and the duties associated with it are evaluated using an analysis grid that itself must be re-evaluated. A new analysis grid is drawn up. Then, job descriptions are drafted.

Mr. Jean-Yves Laforest: In this case, the conversion is ready to be implemented.

Mr. Claude Poirier: We have been working on this for almost seven years. We were in the final stage that involved negotiating pay scales. The government is claiming that bargaining doesn't work, when in fact it works very well. One good example is the case of the Library of Parliament analysts. The union has just signed an agreement in principle the terms of which were negotiated, not imposed on this group. The contract was negotiated by mutual agreement, albeit with a different employer, the Library of Parliament. The union did not negotiate in this instance with Treasury Board. The employer was different, but everything worked out very well. Obviously, because of the economic climate, our employees may be forced to give in. I'm talking about what could happen, because the agreement has yet to be ratified. Our members still must vote, but the union has recommended that they accept the proposed offer, which calls for very small salary increases.

[*English*]

The Chair: *Merci, Monsieur Laforest.*

We'll go to Mr. Wallace, please.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I want to thank our guests tonight for coming at this hour on a Monday. I really appreciate it.

I have a few questions in my seven minutes. We've heard a lot of delegations today, so I want to be perfectly clear.

I'm going to ask Mr. Olsen to answer, if you don't mind.

You're here representing FETCO. I know we didn't hear the conclusion of your presentation, but you're basically in favour of the changes we're proposing in this legislation, is that right?

Mr. David Olsen: Yes, sir, that is correct.

Mr. Mike Wallace: We had a presentation earlier from the Professional Institute of the Public Service of Canada, from Mr. Grenville-Wood, general counsel. He has a different view. He'd like to see it separated out. There's no doubt he'd like to see it as separate legislation. But he also adds, in his conclusions, the following phrase: "while meeting the overall objective of having pay equity the subject of negotiations between the employer and the various public service unions".

To me, that means he also agrees that it should be part of the employer-union agreement package. Again, just so you hear this, he said, "while meeting the overall objective of having pay equity the subject of negotiations between the employer and the various public service unions". Based on that, I think he agrees that it should be part of the agreement.

I know you don't have it in front of you, but perhaps you could comment.

Mr. David Olsen: I don't know the context, so I'm just surmising that he advocates a separate piece of legislation but agrees with the principle that the issue of equal pay for work of equal value should be addressed at the bargaining table.

● (2125)

Mr. Mike Wallace: At the bargaining table, okay.

Have you been advocating for this position for a while, or is this something new for your organization?

Mr. David Olsen: FETCO appeared before the Bilson task force looking into this issue in 2002. Certainly it was the position of FETCO at that time, based on the work of Professor Weiler, that for the unionized workplace the two processes should be integrated. That is, equal pay for work of equal value should be integrated with the collective bargaining process.

Mr. Mike Wallace: I appreciate that clarification.

Regarding the joint presentation from our delegations representing consumer advocacy groups, I guess you'd say, there's another part of the budget that I don't think you mentioned; maybe I missed it. We're doing some work with credit cards, basically, in terms of fairness and transparency. Do you have any comment on what we're trying to accomplish in the area of credit card control that is outlined in this economic action plan?

Mr. Michael Janigan: I'm afraid we haven't studied the issue empirically. Certainly our reaction to the fact that the government is moving in this direction is a positive one. We hope to be able to provide something more substantive in the future to assist the government in their plans.

Mr. Mike Wallace: I appreciate that. I know that question was kind of out of the blue.

On the topic that you're actually here for tonight, advocating for the changes that are outlined in the action plan, I would be interested in knowing how long your two organizations have been working on these issues. Now you're finally seeing some action taken on that. Is that something that's relatively new, or have you been working on it for a number of years?

Mr. Michael Janigan: It's been a lengthy process for both our organizations. I can recall that back in 1992 one of the first things I did when I became executive director was to review a project that involved decriminalization of misleading advertising and the possible steps that could be taken to try to enforce things civilly. Effectively, we're seeing the end of that process 15 years down the line.

Mrs. Anu Bose: Option consommateurs has worked on this for eight years.

Mr. Mike Wallace: Eight years, okay.

Mrs. Anu Bose: I might add, Mr. Wallace, that we are having a conference next month on consumer indebtedness.

Mr. Mike Wallace: Will that be in Ottawa?

Mrs. Anu Bose: No, it will be in Montreal. We shall be very happy to invite you to come.

Mr. Mike Wallace: Well, I am one of those indebted consumers.

How much time do I have left?

The Chair: You have two minutes.

Mr. Mike Wallace: Okay, great.

I don't mean to be mean about this, but I'm from Burlington, where a number of companies are closing. We've had some unemployment. Can either the lawyer organization or the professional organization tell me how many of your members have been laid off in recent times by the federal government?

Mr. Claude Poirier: I don't think we can make any comparison between the private sector and the federal sector, that's for sure. You also have to consider that these people have careers that run 30 years, or 35 years for some people. They do expect their employer to be just from one group to another.

Mr. Mike Wallace: I agree. You expect fairness. But part of the advantage, in a sense, of being a public servant.... And you won't hear me saying anything other than good things about public servants. I come from the municipal world. Public servants work hard. They do all the work. A tremendous amount of work is done by the public servants here. But part of the advantage for public servants is that there is job security that may not exist in other marketplaces. Would you at least agree with that?

Mr. Claude Poirier: Yes.

Mr. Mike Wallace: Yes, sir?

Mr. Patrick Jetté: Yes, if I may, I know there have been no layoffs. As a matter of fact, our problem is your problem or the problem of the government that will follow. You won't have to lay off anyone, because there will not be enough people left to do the job. That's the problem. It's the opposite of a layoff problem. We're losing people and you can't replace them.

● (2130)

Mr. Mike Wallace: Right.

Mr. Patrick Jetté: You see, that's your problem and the problem of the government that will follow.

The Chair: Thank you.

Mr. Patrick Jetté: You're welcome.

The Chair: Thank you, Mr. Wallace.

We'll go to Mr. Mulcair.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chair.

I have to say that we are always in for a few small surprises when Mr. Wallace speaks. He surpassed himself when he took the floor recently. He must be tired because he forgot that we already heard the very same thing this morning. He refers to the statement made by Geoffrey Grenville-Wood and tries to make it look like he is one the same wavelength as Mr. Olsen.

I'd like to quote two brief excerpts from that statement:

[*English*]

> It is our considered view that this legislation is not only unconstitutional but it also creates an unworkable self-defeating morass from which the concept of pay equity will not only not prosper and advance, but it will wither and die. This cannot, or ought not to be, the intent of Parliament.

Then he said he had the conclusion. Let's go to the conclusion:

> In conclusion, The Professional Institute of the Public Service of Canada believes that the laws proposed represent a gross intrusion into and interference with the constitutional rights of our members generally and with our female members, in particular, with respect to the pay equity law.

That's what Mr. Grenville-Wood said. That is the substance of what he said. That is the pith of what he said. Now, for Mr. Wallace to have taken that, it's sort of in line with his other interventions saying that you guys can't get fired....

[*Translation*]

Is it not a fact, Mr. Jetté, as you indicated, that federal government lawyers are not as well paid as most provincial government lawyers?

Mr. Patrick Jetté: Absolutely. That is precisely the problem. Our lawyers are leaving this province to go work elsewhere. They go to work in other provinces or in the private sector where they can earn thousands more and be paid fairly, according to the value of the work they do.

Mr. Thomas Mulcair: I experienced this first hand in Quebec in the mid eighties when salaries were slashed by 20%.

Mr. Patrick Jetté: That is absolutely true.

Mr. Thomas Mulcair: At the time, I quit my job as a government lawyer.

Mr. Patrick Jetté: And you've gone on to have a very nice career.

Mr. Thomas Mulcair: That's right. Back when I was Quebec's Environment Minister, we had a difficult time holding on to good employees in Gatineau, because members of our profession were paid more handsomely by the federal government. This represented a major problem in terms of enforcement of environmental laws in the Gatineau sector of Quebec. We were unable to hold on to our employees. So then, we shouldn't be surprised to see the Conservative tell you that you are spoiled because you can't be laid off.

Mr. Patrick Jetté: If things continue, there won't be anyone left to lay off.

Mr. Thomas Mulcair: We're in luck this evening, Mr. Poirier. A question has been put to you by Mr. McKay of the Liberal Party of Canada, this grand party that once held the reigns of government and that even has the word "liberal" in its name. He informed us that the party is prepared to vote in favour of amendments to help your union. The same goes for you, Mr. Jetté.

I suggest that you follow the lead of Anu Bose and Michael Janigan, both of whom made some for specific suggestions about how consumers could be protected. Please let us know as soon as possible which particular clauses you would like to see amended. Now that I know that "Lightning" McCallum and Mr. McKay plan to support these changes, as we plan to do as well, then the problem will be resolved. I did hear him say this earlier:

[*English*]

that it's a "sledgehammer" and "you have a very legitimate dispute".

[*Translation*]

I have a hard time believing that someone who claims to be a liberal and to be ready to fight for people's freedoms can say that you have "a very legitimate dispute" and then not vote in favour of your amendments that we are going to put forward tomorrow during the clause by clause study phase of this important legislation, Bill C-10.

I would urge you to take a look at these amendments as quickly as possible, to be here tomorrow or to send someone in your place, or to send us your own amendments immediately. With the support of the Bloc and the Liberals, under the aegis of the reckless "Captain Flash", we can settle this in a flash, Mr. Chair.

Mr. Claude Poirier: The amendments that we would like to see are included verbatim in our submission. A word of caution is in order, however. All this does is open the door to some negotiation, and we have seen that this can work. It would be a balanced approach involving both parties, given economic conditions, but at least it would involve some negotiation.

● (2135)

Mr. Patrick Jetté: We have also proposed specific changes in our submission. Moreover, the Public Service Labour Relations Board is a bargaining mechanism that ensures that pay increases are evaluated on the basis of the government's ability to pay. If negotiation was an option, that would be good. Arbitration, the ultimate step, follows the negotiation process. If we could go to arbitration, we could achieve our objectives and exercise our rights which are fully and fairly protected.

Mr. Thomas Mulcair: Precisely.

Mrs. Bose, could you put clause 70 something in writing? I've checked and we don't have anything. Your submission was extremely clear—as was yours, Mr. Janigan—but we would like to have something in writing so we can follow up tomorrow.

Mrs. Anu Bose: We will get that to you tomorrow morning.

Mr. Thomas Mulcair: Thank you.

The Chair: Thank you, Mr. Mulcair.

[*English*]

We'll go now to Mr. Pacetti, please, for five minutes.

Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chairman.

[*Translation*]

Thank you to the witnesses for taking the time to come and make their submissions to the committee.

I have a question for Mr. Poirier. You brought up the subject of pay and classification conversion. Your association is comprised of several groups, namely economists, translators, interpreters and terminologists. I'm fairly certain that they do not all earn the same salary.

Can you give me an example of what this means to you, in monetary terms?

Mr. Claude Poirier: The reality is that we have a range of pay scales. Economists just starting out in their career are not paid the same as economists at the top of their pay range, which can be anywhere up to $100,000. That's how the process works. Together, the parties examine the value of the work.

Mr. Massimo Pacetti: Which parties?

Mr. Claude Poirier: The parties would be the employer, who is represented by Treasury Board, and the bargaining agent. Together, they look at whether the salary scale is equivalent and proportional to the value of the work performed. In some cases, the pay scale may be adjusted downward, while in others, it might remain the same. This is all part of the conversion process. The government has just...

Mr. Massimo Pacetti: And you say 12,000 employees are affected?

Mr. Claude Poirier: This affects about 10,000 employees, most of whom are economists and sociologists.

Mr. Massimo Pacetti: And they are divided into how many groups?

Mr. Claude Poirier: The TR group is comprised of between 1,000 and 1,100 translators, terminologists and interpreters. There are 90 Library of Parliament analysts.

Mr. Massimo Pacetti: Once you have agreed on a base, is there a pay scale that applies to that base?

Mr. Claude Poirier: Currently, there are seven different pay scales. In fact, there are eight pay scales in the collective agreement, but in reality, only seven are used. Each pay scale includes different pay levels. And here is where an objective, not subjective, re-evaluation is required.

Mr. Massimo Pacetti: In percentage terms, what does this represent? An increase of 5%, or a reduction of 3%?

Mr. Claude Poirier: The outcome could be neutral. There may be no pay increase at all. Part of the process involves an evaluation, the other, some negotiation.

[*English*]

Mr. Massimo Pacetti: There's plenty of time. There's 20 minutes.

Merci, monsieur Poirier.

The Chair: You have two minutes, Mr. McCallum. You have to move at lightning speed.

Hon. John McCallum (Markham—Unionville, Lib.): Okay.

Just to clarify with Mr. Mulcair, I'll remind him of what I've said about three times today, which is that much as there are many things in this budget we do not like, the overriding priority is to deal with the economic crisis and to get the money out the door. I think I've said that frequently.

My question is for Madame Bose and Mr. Janigan.

You obviously like the content of the competition changes, but many do not. For me it's at least as much a question of process. We have a hugely complex set of changes to the Competition Act rammed through in the proposed budget act in such a way that there's no time for debate. I suspect on our side there is much we would like in it, but it is so complex—it is change of a nature that occurs approximately only every 20 years—that there may be some elements in there that will have unintended consequences. So I cannot understand why you could approve of the process, and why you would not prefer to see this as a stand-alone bill to have the scrutiny that it deserves. Or am I wrong on that point?

● (2140)

Mr. Michael Janigan: Yes, Mr. McCallum, there are some comprehensive changes particularly to the powers that are enjoyed by the competition commissioner and the competition tribunal. Most of these have been discussed and discussed and discussed over the years, particularly in relation to things like administrative monetary penalties and expanding the ability of the competition commissioner to seek administrative remedies.

We look upon it as, rather than effectively changing the substance of the act, changing the tool kit and the ability of the competition commissioner to deal with the act. Yes, some have expressed concerns that we don't really know what the competition commissioner is going to do with this new tool kit, but effectively those are the same kinds of concerns that come about whenever you pass a new law. You don't necessarily know how a judge is going to interpret it. You don't necessarily know how a tribunal is going to administer it.

I think we have some ability to trust in the enforcement of competition law in Canada, and trust in the discretion of the competition commissioner to exercise the powers wisely, and I say let's give them the powers to deal with competition in this economy in a 21st century manner, not something that will saddle them.

The Chair: Thank you, Mr. Janigan.

Thank you, Mr. McCallum.

Monsieur Carrier.

[*Translation*]

Mr. Robert Carrier: Thank you, Mr. Chair. Welcome to the committee's final meeting of the day.

I have a question for Mr. Laliberté who represents the Fédération des travailleurs et travailleuses du Québec. How many individuals or employees do you represent?

Mr. Pierre Laliberté: Our federation represents 450,000 workers.

Mr. Robert Carrier: Thank you.

I see from the name of your organization that all workers, male and female, are equal. Correct me if I'm wrong, but you did not talk about the issue of pay equity which is addressed in the budget implementation legislation. According to this bill, pay equity will henceforth be part of the negotiating process. Mr. Olsen mentioned a little while ago that he is in favour of having pay equity negotiated. I have always believed in equal pay for work of equal value, believed that this was a right. How do you negotiate a right? I'd be interested in knowing what you think about this issue, since it concerns you directly.

Mr. Pierre Laliberté: As far as we are concerned, the issue of pay equity transcends the collective bargaining process. This is something that cannot be negotiated. We are talking here about a long-standing practice of employment discrimination that goes back decades. Women were declared persons under the law 80 years ago. In the labour market, some jobs continue to be viewed as either male or female bastions. There are structural causes of discrimination in the workplace that cannot be addressed within the context of bargaining. Some jobs are unique to a specific working environment. Therefore, comparisons must be drawn with other jobs and analyses must be done.

For us, it's like mixing apples and oranges. Again, I want to take this opportunity to urge the government to separate these issues. If it refuses to do that, then I beg the Liberals to put their principles before their political interests and vote against this budget, because principles and fundamental rights are at issue. We can't understand why they don't see that. As we see it, this issue is not something that can be negotiated. We can always debate whether or not some program or another merits more funding, but this is a very serious issue, to our way of thinking.

Earlier, your colleague threw me a line. Had you asked me if Quebec came out on the losing end of this budget, I would have answered yes, absolutely, because of equalization, first of all. We cannot comprehend in the least how the Canadian government, which is spending the equivalent of $18 billion by cutting taxes, cannot afford to pay the $2 billion already committed under a five-year agreement, at a time when all provinces that are under performing are facing very significant fiscal pressure. As far as we are concerned, this is a fundamental problem.

Moving away from the budget, I would like to draw your attention to the proposal to establish a national securities commission. As the old saying goes, if it ain't broke, don't fix it. The system in place right now works. If the objective is to shift activities to Toronto, fine then, but if the goal is to have a system that works, then we really have no need of a national securities commission.

● (2145)

The Chair: You have time for one last question, Mr. Carrier.

Mr. Robert Carrier: How do you feel about the backward step that has been taken, namely the decision to include pay equity in the collective bargaining process, instead of viewing it as a right, as it currently the case? How could a Conservative government, with the support of the Liberals, backtrack on this decision? The Liberals have said they will support many proposals because the budget needs to pass to ensure an economic turnaround. Could they reverse their position and admit that pay equity is now a right?

Mr. Pierre Laliberté: I will wager that our Conservative and Liberal friends will see the light and acknowledge that this is a matter of principle that warrants...

There you have it.

[*English*]

The Chair: *Merci.*

We'll go to Mr. Dechert for five minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

I'd like to direct my question to Mr. Olsen. It seems to me that truly equitable compensation can really only occur when all parties are working together. It appears to me that the current approach is rooted in an adversarial system, and in my opinion, it's time to change that system.

As many know, I was a lawyer in private practice for 25 years before being elected to government. Although I didn't practise in the area of labour and employment law, I certainly had many partners who did. I suppose I benefited indirectly from their many great efforts and long efforts on behalf of some of their clients over the years.

I wonder if you could comment on some of the court cases that have occurred in the past, and specifically on how long they have lasted, how much money has been spent on lawyers and such other fees—and I hope my former partners aren't watching this evening.

Mr. David Olsen: Let me talk about one that I am most familiar with, and that is the litigation between the Public Service Alliance of Canada and Canada Post Corporation. The Public Service Alliance of Canada filed a complaint in 1983 that the white-collar clerical employees they represented did work of equal value to the blue-collar postal clerks who worked in our postal plants—and by the way, they were gender-neutral. So we had a female-predominant group, white collar. We had a gender-neutral group in our plants, 50-50 men and women, of about 20,000 employees, and then, to make sure that the group was predominantly male, they added the letter carriers, who were in a different union at the time.

In any event, that case was in investigation for 13 years. It was finally referred to the tribunal in about 1995. It lasted 10 years before the tribunal. It was then reviewed by the Federal Court trial division.

Canada Post contended it had not discriminated by paying unequal wages for work of equal value. The tribunal found the evidence to be very deficient, after 10 years of litigation, but nevertheless awarded, but said that because the evidence was so bad they would only award 50% of the amount claimed. The Federal Court trial division, where it currently sits, reviewed the case, determined that the case had not been proved before the tribunal, and sent it back to the tribunal to dismiss the file.

Interestingly enough, I thought I might get some questions about it, but I'll tell you what Mr. Justice Kelen of the Federal Court trial division said about the lengthy litigation process and how that was a terrible way to resolve these kinds of disputes. I have to say that this case is now under appeal again and will likely be heard in the Federal Court of Appeal in the fall of this year.

As it stands, until this decision is set aside, Mr. Justice Kelen of the Federal Court trial division has ruled that the complaint had not been proved, that the evidence was not satisfactory, and he had this to say about the process:

> Within the first year of the hearing before the Tribunal, the evidence upon which the PSAC complaint was referred by the Commission to the Tribunal was found deficient and of no value.

—this is at the end of the first year of hearing—

> At that point, all the parties and the Tribunal recognized that the evidence did not substantiate the complaint. The Tribunal has the legal duty, if it finds that the complaint to which the inquiry relates has not been substantiated, to dismiss the complaint under subsection 53(1) of the CHRA.
>
> However, in this case the Tribunal allowed PSAC to retain new experts to marshal new evidence in an attempt to substantiate the complaint. Marshalling of the evidence took place over several years, and each time the evidence was found to be deficient...

The hearing was then adjourned or ended to allow the alliance to repair or buttress the deficient evidence.

He says:

> In my view, the Tribunal breached its duty under section 53 of the CHRA, and breached the duty to provide parties with a fair hearing. A fair hearing is not a continuing process. A fair hearing is one where a party knows the case against it and has an opportunity of addressing that case within a reasonable time. At that point, the Tribunal has a duty to adjudicate upon the case.

He concludes that the case had not been proved at the tribunal and sent it back to be dismissed.

● (2150)

Now, what I have to say is—

The Chair: Mr. Olsen, I'm sorry, but Mr. Dechert's time is up.

Mr. David Olsen: Could I just clarify one point?

The Chair: I'll just ask you to wrap up.

Mr. David Olsen: This case that is still outstanding after 25 years deals with the past situation. I will tell you that the Public Service Alliance of Canada and Canada Post sat down in 2002 and resolved all issues concerning equal pay for work of equal value in collective bargaining. And—

● (2155)

The Chair: Mr. Olsen, I'm sorry to break that up.

Mr. David Olsen: Thank you.

The Chair: We'll finish with Mr. McKay, please.

Hon. John McKay: Mr. Laliberté, I want to ask you a question about employment insurance.

You made several points about access to the program. You thought that access should be improved. The government has probably done the least amount possible, namely stacking five hours on the end of the program, shrinking the two-week period down to zero, those sorts of things. All of that costs significant sums of money. The other thing the government did was freeze the premiums for the year and they called that a stimulus, which the parliamentary budget officer took exception to, stating that it really wasn't a stimulus.

But given that, the premiums will inevitably rise next year. More accurately, the cost will inevitably rise next year because of the huge influx of people who will be unemployed. Is it your view that the cost of the program should be taken out of general revenues, or should it be taken out of premium revenue?

Mr. Pierre Laliberté: To answer your question, we've always thought the system as a whole would be best managed by employers, unions, and government together—with enough money to go around, in other words. This is a model we have for a number of organizations in Quebec, for instance, and it works relatively well and helps to create consensus over policies.

In the current context, it would have to come from general revenues. In the context that we are dealing with right now, it would be fiction to think that we could pay for the benefits that would be given out of the premiums that are being paid. You know that.

For the time being, what was supposed to hold under the new *fiducie*.... I don't know how you say it in English.

Hon. John McKay: Agency.

Mr. Pierre Laliberté: Agency, yes. Well, it doesn't hold water anymore.

We're disappointed that the $4 billion went to premiums rather than to benefits, because that's essentially what it would have cost to have what we proposed in terms of allowing everyone in Canada to qualify equally with the same number of hours, something that would benefit people in Alberta just as well as people in Nova Scotia, to have 60% of the insurable salary.

The average benefit right now is $330. People who are used to making better salaries will have to rely on this.

Hon. John McKay: Right now it's also about a $17 billion program. And so your advice to the government would be that when the costs inevitably go up, those costs should be taken from the general revenues rather than from premium revenue. And you're saying that as a temporary...but temporary around here becomes very permanent very quickly. So effectively, what you're saying is that premium revenue is frozen.

Mr. Pierre Laliberté: I'm trying to say a few things here.

I think that premiums should not have been frozen, indeed. And the benefits should have been improved. A number of groups in Quebec, all the union federations included, essentially proposed that changes be made for two or three years, with a sunset clause to weather the storm while it happens and not lock in future governments. Even if we wanted those improvements to be permanent, it was just to essentially put the government at ease with it. That suggestion was not entertained.

● (2200)

Hon. John McKay: Thank you.

The Chair: I want to thank you all, witnesses, for your presentations and your responses. I especially want to thank you for coming in at this time of night on such short notice.

Colleagues, I'd ask you to stay at the table for a couple of minutes. I want to thank all of you for the day you've put in and for your questions and discussions.

We do have amendments to this piece of legislation, which will not surprise those of you who have sat through this session today. We need a decision as to how we proceed with clause-by-clause. We have our regular committee tomorrow morning at 9 o'clock. I am proposing that we start at 10 o'clock so we can have an extra hour in the morning. I believe over 40 amendments have been presented, and we may have more.

My suggestion is to begin clause-by-clause at 10 a.m. I don't know how long that will take. I assume it will be quite a fulsome discussion. As your chair, that's my proposal.

Some hon. members: Agreed.

The Chair: Thank you.

The meeting is adjourned.

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