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Chair

Mr. James Rajotte

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● (1100)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order. This is meeting number 11 of the Standing Committee on Finance. I want to welcome all of our guests here this morning. We have two panels.

Orders of the day are pursuant to the order of reference of Tuesday, October 29, 2013, the study of Bill C-4, a second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013, and other measures.

We have six presenters at our first panel. We have Professor Ian Lee from Carleton University; from the Canadian Labour Congress, the secretary-treasurer, Mr. Hassan Yussuff; from the Canadian Taxpayers Federation, Mr. Gregory Thomas; from the C.D. Howe Institute, Mr. Benjamin Dachis, senior policy analyst; from the Public Service Alliance of Canada, the national president, Ms. Robyn Benson; and from Unifor, the president, Mr. Chad Stroud. Thank you all for being with us here this morning.

You will have a maximum of five minutes for an opening statement, and we'll begin with Mr. Lee, please.

Dr. Ian Lee (Assistant Professor, Carleton University, As an Individual): Good morning. My name is Ian Lee, and I'm a professor at Carleton University's Sprott School of Business.

I thank the finance committee for the opportunity to appear beside these very distinguished witnesses today, presidents and vice-presidents and directors general. However, in sharp contrast, I must plead your indulgence, for I'm merely a dues-paying, rank-and-file union member, who, as a public servant in a public university, toils in the vineyards of the academy educating the next generation. In short, I'm just a simple worker on the shop floor of the factory, metaphorically speaking, so my views may be at sharp variance with those who operate at vastly more elevated levels than mere people such as myself.

I want to provide the following important disclosures very quickly. One, I do not consult to any organization, government, corporation, union, NGO, or person, directly or indirectly, anywhere. Two, I do not belong to, nor do I donate moneys to, any political party. Three, I have no investments of any kind anywhere, save my house and my share of the Carleton University pension plan. Four, I'm neither a registered lobbyist nor an unregistered lobbyist. Five, I was employed on three separate occasions in the Government of Canada at StatsCan in the early seventies when I was a dues-paying member of the Public Service Alliance; at Canada Post in the early eighties; and then at PCO.

Now to the issues.

I want to echo Treasury Board President Clement in his June 13 op-ed in the *National Post*. Based on my extensive and frequent teaching trips around the world to many countries, it is crystal clear to me that Canada has one of the most competent and educated and ethical public services in the world. Moreover, I think it's a very serious mistake to blame public servants for the generous compensation and benefits they have relative to the private sector, for these unsustainable benefits were approved by former governments and former presidents of the Treasury Board. Restated, it was failures of political leadership by former governments, not public servants, that approved benefits such as retirement at 55, severance benefits for voluntary departures, or the present sick leave system.

This is not to suggest the public service has not reformed during the past 50 years. Indeed, public service reforms started with the 1957 Heeney report, following on the Glassco commission policy and expenditure management system, coming down to the present, with the 2005 Public Service Modernization Act, the Federal Accountability Act, and the recent performance management reforms of the present Treasury Board president.

However, these reforms, while important and necessary, did not address the equity problem: the growing gap in compensation and benefits between the federal public sector and the private sector.

As an aside, I must debunk the seriously misleading denial of a wage gap between the public and private sector by simply noting the minimum wage today in Canada is $10.50 per hour, while the minimum starting salary in the federal public service as a CR4 is about $42,000 per annum, which, with pension, sick leave, and holidays, is well north of $50,000. This is about two and a half times to three times the annualized minimum wage. We must mind the gap, not deny the gap, of increasing inequality between the public and private sector.

Now to the critical reform of the public service in this bill and designation of essential services by the elected government.

Eight hundred years ago, the English-speaking people undertook an experiment at Runnymede when we demanded that the king sign the Magna Carta to become accountable to the people. Slowly, sovereignty was ceded from the monarchy to the people, through the agency of elections of members of Parliament, who are the trustees of our sovereignty in Parliament. We came to fully understand the brilliant German economist and philosopher Max Weber's profound insight that because MPs and governments exercise our sovereignty, government necessarily possesses, in his famous words, “the legitimate monopoly of coercion”. Indeed, Canada's elected government, and not unelected interest groups, no matter how honourable their cause or claim, is exclusively responsible for the peace, order, and good government of Canada and Canadians. Nothing can trump or derogate from the sovereignty of the people.

Collective bargaining rights are very important. But let us be clear: we did not struggle for 800 years to replace the divine right of kings with the divine right of unions.

Now I'll conclude with the reforms proposed for the Canada Labour Code.

I am completely mystified by criticisms of this reform. Any careful reading shows that the proposed reforms do not narrow the definition of “danger”. The famous three r's—the right of the employee to know, the right to participate, the right to refuse—are not abrogated by this legislation. Indeed, the reforms increase the influence and leverage of workers and unions by enhancing the internal responsibility system through an interest-based system of workplace safety. It compels for the first time ever mandatory written records of the enhanced health and safety committee required in every organization with over 20 employees. In plain English, the unions and workers will have more skin in the game in the revised, enhanced safety regime. All recourse by workers and unions remains, and indeed is enhanced, by the proposed mandatory paper trail, because Labour Canada health and safety officers, who must complete a rigorous two-year training program, will now have full access to a comprehensive written record to replace the faulty, contradictory, inaccurate, unreliable, verbal memories months after the fact.

● (1105)

These reforms decentralize the second level of response to any allegations of danger to a committee on the ground that is composed of workers, unions, and management.

As a dues-paying union member and a worker in the public sector, I support these reforms.

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

We'll go to Mr. Yussuff now, please, for your presentation.

Mr. Hassan Yussuff (Secretary-Treasurer, Canadian Labour Congress): Thank you, Mr. Chair.

On October 22, the Conservative government introduced the second budget implementation act from the 2013 budget speech, Bill C-4.

Among several other provisions in the act that have nothing to do with the budget, we find comprehensive changes to the labour relations regime for the federal public service workers, under division 17 of part 3 of the bill.

When these changes were introduced, without notice or consultation, even the current President of Treasury Board admitted he could not explain the consequences of these changes. He said that details on how the government's omnibus budget bill will affect federal public sector workers won't be known until some time after the legislation becomes law.

I want to thank you on behalf of the 3.3 million members of the Canadian Labour Congress for giving us the opportunity to explain to members of this committee the consequences of the proposed changes. As you know, the CLC brings together workers from virtually every sector of the Canadian economy, in all occupations in all parts of Canada, including those under the federal jurisdiction.

To summarize our position, the proposed changes to the Public Service Labour Relations Act in division 17 of part 3 of Bill C-4 is a direct attack on the freedom of association and collective bargaining rights protected by our charter. If passed, this bill will cripple the collective bargaining process and significantly alter the balance of power in our labour relations regime in favour of the employer. There are three key changes that will undermine the collective bargaining process: how changes were introduced, how essential services will be determined, and how the arbitration process will work.

For the labour relations regime to be effective, development and changes have to be done in consultation with all parties involved. That is not what happened here. The government decided to slip fundamental changes to the labour relations regime into a budget implementation bill, with no meaningful consultation with the public, unions representing their employees, and certainly there was no study prepared by a committee of neutral experts to quantify the consequences of these changes.

I must remind members of the committee that changes to the PSLRA of the Canada Labour Code have been made in the past only after significant consultation and analysis from all stakeholders involved: John Fryer, in 1999; modernizing HRM, in 2001; and Peter Annis, in 2009.

If passed, the proposed changes to the essential services regime in Bill C-4 will allow employers to force whomever it chooses to work during a strike on the pretext that they are essential, without providing any clear definition of what constitutes an essential service. The government could unilaterally, if it felt like it, declare that every public service is essential and ban strikes completely. It is more likely that the government will designate just enough employees as essential to disarm the union's capacity to freely bargain in a collective agreement. In other words, they can change the rules to give the employer an advantage throughout the game.

The members of the committee should know that these changes are very similar to those imposed by the Saskatchewan government several years ago, which gave the employer certain unilateral powers under essential services. The constitutionality of that legislation has been challenged by several public sector unions in Saskatchewan, and after, the ILO found them to be unacceptable. The case is currently before the Supreme Court of Canada and is likely to be heard some time in October of 2014.

With regard to how the arbitration process will work, the collective bargaining process will also be undermined by the revised arbitration process. We don't understand why a government that is so keen on freedom of choice is trying to remove the right to choose arbitration from its federal government employees. It is difficult to understand why a government that called for a study five years ago —chaired by a respected jurist, Peter Annis—on reducing labour disputes, is trying to remove a provision that had a direct impact on the reduction of work stoppages in the federal public sector.

Furthermore, for those who will end up in forced arbitration, Bill C-4 gives complete control over the outcome of the arbitration process to the employer. The bill specifies that out of all factors that must be taken into account, the arbitrators must give preponderance to Canada's fiscal circumstances relative to its stated budgetary policies. This means that arbitrators are no longer independent. Instead, they have to follow directions issued by the Minister of Finance in speeches or economic updates instead of determining the result of a case on its merits.

Even worse, if passed, the bill will allow a party who is unhappy with the arbitration panel's decision seven days to ask the chairperson of the PSLRB to review the decision. If the chairperson thinks the decision is unreasonable, he or she can direct the arbitration panel to reconsider the decision.

The committee should delete the provision introduced in division 17 of part 3 of the bill, and the government should sit down with workers' representatives to discuss how the federal public service labour relations regime can be improved.

Thank you, on behalf of the CLC.

● (1110)

The Chair: Thank you very much for your presentation.

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

Mr. Gregory Thomas (Federal Director, Canadian Taxpayers Federation): Thank you, Mr. Chairman.

On behalf of the 84,000 supporters of the Canadian Taxpayers Federation, we welcome the opportunity to speak about the changes in Bill C-4, and we thank you for inviting us.

There's no question that something has to be done about the work environment in the Government of Canada. It's a toxic environment. Workers can't work. Leaders can't lead: 193,000 full-time equivalent workers and fewer than 100 dismissals.

When leaders lead and managers manage, they get human rights complaints. They get grievances. They get group complaints, individual complaints, policy complaints, and very often these things end up in the Federal Court of Canada. It's a toxic, terrible environment.

Whether these solutions will be effective, who knows? Government is a highly complicated organ. But what we do know is that people don't like going to work in the Government of Canada.

This report, produced by a management committee, PSMAC Subcommittee on People Resourcing, reported this: 50 million days worked in the Government of Canada; 7.6 million paid leave days taken; 2.1 million paid holidays.

Taking out paid holidays, 15% of the days that Canadians paid for were not worked in the Government of Canada.

But we know that in the departments of government where people have strong commitments to their mission—the Attorney General, the environment department—absenteeism is much lower and people have a commitment to the job. Their commitment to the mission surpasses the horrors of spending a day working in government employment.

So we're happy that the government is taking seriously its obligations to do something. When this government took office, the average compensation for a federal government employee was $86,000 a year, all in the cost to Canadians of having one worker work for the government all year. Five years later, from 2006 to 2011, that had gone up to $111,000. The Parliamentary Budget Officer projects that it will be $129,000 per employee by fiscal 2015 if nothing is done. So there's an urgent problem.

I'll just close with one case summary. There's a foreign service worker with a six-figure job description who was proven, beyond a shadow of a doubt, to have spent more than half of his time...or 75% of his time, for seven months, surfing the net, reading news and sports, and downloading questionable material. This was proven. He was dismissed, and he was reinstated by a Public Service Labour Relations Board adjudicator. You know, there isn't anybody working out of government who could get a deal like that.

We urge leaders of all parties to create a work environment where Canadians can go to work for the Government of Canada, do an honest day's work for an honest day's pay, be treated fairly, and have an avenue of appeal, if they feel they haven't been treated fairly, that's effective, efficient, quick, and just.

Thank you, Mr. Chair.

● (1115)

The Chair: Thank you, Mr. Thomas.

We'll go to Mr. Dachis, please.

Mr. Benjamin Dachis (Senior Policy Analyst, C.D. Howe Institute): Hello and good morning.

Thank you very much for inviting me here today to speak to you. My name is Benjamin Dachis. I'm a senior policy analyst at the C.D. Howe Institute. For those who are not aware of us, the C.D. Howe Institute is an independent, not-for-profit organization that aims to raise Canadians' living standards by fostering economically sound public policies.

I'm the co-author of a paper related to the matters under discussion here today, specifically those in division 17 of Bill C-4. The paper is "The Laws of Unintended Consequence: The Effect of Labour Legislation on Wages and Strikes", published in 2010. It is available on the C.D. Howe Institute website. It's a little long for translation, so I brought some copies along with me as well if people are interested.

I am working with co-authors on an expanded academic version of the paper as well, which I can speak to during questions if you are interested.

We can summarize our results, which I'll get into in some detail later. First, we find that relative to the workers with the full right to strike, workers who are subject to an essential services designation have lower wages otherwise. Second, workers who are subject to compulsory arbitration have higher wages than workers with the full right to strike. Third, placing workers under compulsory arbitration reduces the likelihood of bargained contracts in the future and creates a greater reliance on arbitration.

Between 1978 and 2008, about 4% of public sector contracts that we observed were settled with a strike, whereas about 8% were settled with arbitration, 11% were settled through legislation, and over 60% were freely bargained. Over the last 30 years, governments have generally taken two approaches: limiting the ability of workers to strike, or the consequences of a strike. This is apart from back-to-work legislation, which I can discuss later if you like, and the results of that legislation.

The first approach is the essential services designation. In these cases, workers are allowed to strike, but some portion of the workers are legally obligated to continue providing services. The proposed language in the bill that we're discussing today will enable the government to place more workers and positions under this designation.

The second approach is to forbid strikes and to require remaining disputes to be decided through arbitration. The bill as written will require that when more than 80% of a bargaining unit is designated as essential, disputes will be decided through arbitration without the option of a work stoppage. Our work looks at the consequences on wages of workers and their strike behaviour when governments apply such rules to their workers.

We answer this by comparing the nearly 6,000 major public sector labour contracts that were settled between 1978 and 2008 with what happened when workers were subject to the regulations. Controlling for other factors—and I can get into details of that if you like—we find that when a workforce is subject to an essential services designation, compared with workers with the full right to strike, their real wages are about 2% lower than otherwise.

On the other hand, we find that when workers are subject to compulsory arbitration, that increases their real wages by about 1% relative to workers with the right to strike. We also find that using arbitration in the previous contract reduces the likelihood of a freely bargained next contract and more than doubles the likelihood of using arbitration again to settle the next contract. This suggests that a move to arbitration will beget a cycle in which parties return again and again to third-party intervention to settle their disputes.

Others have found that mandatory arbitration led to an increase in other types of disputes, such as work to rule or other work slowdowns. In sum, a move to increase the number of bargaining units that have some workers—that is, less than 80% share—who cannot go on strike will likely reduce wages, but placing more workers under compulsory arbitration will likely increase wages and lead to a great future reliance on arbitration and potentially other disputes.

Thank you for your attention. I look forward to taking any questions.

● (1120)

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

We'll go to Ms. Benson, please.

Ms. Robyn Benson (National President, Public Service Alliance of Canada): Thank you.

At the outset, I want to make it clear that the changes in Bill C-4 to the Public Service Labour Relations Act were introduced without any consultation whatsoever with labour, and this, quite frankly, is unprecedented.

The government ignored the broad consultation that normally takes place when changes to labour law are being considered. For example, the 2003 Public Service Modernization Act was only introduced after almost three years of discussion and studies involving stakeholders, the Public Service Staff Relations Board, and the academics.

This time the government developed its plans in secret, behind closed doors. Right after the throne speech I contacted the Treasury Board president's office. They said it was premature to bring in changes. Then without another word, the government deliberately included the changes in a budget bill so that they could be fast-tracked without the discussion and open debate they deserve.

Minister Clement and his colleagues may be pleased with what they see as another blow to the labour movement, but these changes will have a very direct impact on their employees. The changes send a strong message to public service workers that their employer doesn't respect their work and the services they provide to this country.

Bill C-4 essentially ignores the fundamental principles of freedom and association and the right to strike. It rewrites the rules that affect bargaining, the choice of dispute resolution, essential services designation, and arbitration. The entire framework of the current Public Service Labour Relations Act is based on, “a commitment from the employer and the bargaining agents to mutual respect in harmonious relations”. It also recognizes that collaboration and consultation are “a cornerstone of good human resources management”.

Bill C-4 makes it plain that this government isn't interested in mutual respect or harmonious relations.

Our written submission contains details of many of our concerns. Today I'll talk about just a few of the key concerns.

First, concerning the designation of essential services, our union believes that during a strike, services should be maintained at a level that ensures there is no possible danger to the safety and security of the Canadian public. As an example, PSAC members were on strike the morning of September 11, 2001. We brought our picket lines down immediately and our members returned to work quickly and without question.

PSAC has worked with the employer to ensure that the safety and security of the public would never be compromised should a strike take place. In fact, we've agreed to thousands of positions being deemed essential. We take balancing the interests of the public, our members, and the employer very seriously. But apparently that's not good enough.

Bill C-4 gives the government the power to unilaterally decide who is essential and what services are essential. Employees declared essential can be asked to perform all of their duties, not just those that are essential, and to be available 24/7 to perform them should a strike take place. The right of the employees' union to challenge the government's opinion about what is essential before an independent labour board has been removed. It has been removed even though the current law and jurisprudence require the labour board to err on the side of the safety and security of the public. Balance and fairness are gone. The government can behave unreasonably and it can't be held accountable because there is no avenue for appeal.

Legal experts have said that a union's right to choose arbitration creates a level playing field because it balances Parliament's ability to legislate an end to a strike and order arbitration. Bill C-4 takes away the right to choose arbitration. Now it will only be available if the employer agrees, or where the employer has designated 80% of the bargaining unit as essential.

It's not hard to imagine a government using its new powers to designate just under 80% of a unit. This leaves the remaining workers with a limited ability to strike, and then they can't choose arbitration.

● (1125)

The Chair: You have one minute.

Ms. Robyn Benson: If that's not bad enough, Bill C-4 expands the current limits on what the public interest commission and arbitration boards can consider when making their awards.

I just want to mention what the worst of it is. Policy grievances were introduced when the Public Service Labour Relations Act came into effect. They were used to streamline the grievance process. It made the process more efficient and it was cost-effective to the employer. Now they've taken that right away and they want only individual grievances to be filed.

Bill C-4 will make widespread fundamental changes to the labour relations laws covering all federal government workers.

I ask that you remove divisions 17 and 18. I also ask you to engage in real consultation with the bargaining agents, employer groups, and labour relations experts.

Thank you.

The Chair: Thank you, Ms. Benson.

We'll now hear from Mr. Stroud, please.

Mr. Chad Stroud (President, Local 2182, Unifor): Good morning, Mr. Chair.

I'm Chad Stroud, the president of Unifor Local 2182. I represent the marine communication and traffic service operators of the coast guard. We are an essential service at this time.

Unifor is Canada's largest private sector union with more than 300,000 members. It also represents public service employees such as my group, the printing services group, non-supervisory employees, Transport Canada air traffic control employees, and the House of Commons technical group.

Unifor brings a modern approach to unionism: adopting new tools, involving and engaging our members, and always looking for new ways to develop the role and approach of our union to meet the demands of the 21st century.

Unifor objects to the amendment of important labour relations legislation, without full consultation with stakeholders, by way of an omnibus budget bill. We feel it is important to register our concerns regarding the process through which federal budget legislation has been implemented in recent years.

We are especially concerned with measures that affect collective bargaining legislation and changes in very important health and safety regulations and practices defined under multiple pieces of legislation.

In our view, it is entirely inappropriate to implement important policy changes on matters such as these through a composite budget implementation bill without full research, consideration, or fine tuning, and with debate frequently ended through invoking closure.

The Public Service Labour Relations Act, in its enactment in 2003 as part of the Public Service Modernization Act, followed extensive consideration and consultation beginning in 2000. The PSLRA then featured a mandatory five-year review. That five-year review resulted in the "Report of the Review of the Public Service Modernization Act, 2003", which was released in 2011. That report followed appropriate consultation by the review team.

Notably, the amendments to the PSLRA now set out in Bill C-4 are not amendments that were recommended by the review team after consultations with all stakeholders and careful review of the PSLRA. The amendments now set out in Bill C-4 are not the product of any consultative process.

Clause 294 of Bill C-4 would amend the PSLRA by deleting the existing definition of essential service as

> a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public.

It would replace that definition with one that describes an essential service as anything that the government in its exclusive right determines will be necessary for the safety or security of the public or a segment of the public.

Clause 305 of Bill C-4 would amend sections 119 to 134 of the PSLRA to provide that the employer will unilaterally determine what is an essential service and what level of essential services will be supplied during a labour dispute.

Unifor and other bargaining agents can have no confidence that the unilateral power that Bill C-4 would grant the government to determine what is an essential service will not be abused in the absence of a cooperative effort to identify real essential services that ought to continue during a labour dispute, assisted where necessary by the PSLRB.

The proposed amendments to section 103 of the PSLRA will eliminate interest arbitration as one of the two methods a bargaining agent may, as a right, select as the process for the resolution of collective bargaining disputes. Instead, all disputes will by default proceed by the conciliation and strike/lockout process, absent an agreement between the bargaining agent and the employer to use arbitration as the process.

Unifor is troubled by these amendments that will erode the independence of interest boards of arbitration. Clause 310 of Bill C-4 proposes to add new section 158.1, which directs the chair of the Public Service Labour Relations Board to review arbitration awards to determine their compliance with the listed criteria in section 148 and permits the chair to direct the board of arbitration to review its decision and to provide further justification on a new decision. Vesting such a power of review in the chair of the Public Service Labour Relations Board would raise real concerns about the independence of the arbitration process as a legitimate process for the resolution of collective bargaining disputes and real concerns about the fairness of proceedings in which parties may be deprived of an opportunity to be heard before an award is reviewed and amended.

Unifor does not support the elimination of the compensation analysis and research services. Such services are within the board's current mandate and would be eliminated by clauses 295 and 296 of Bill C-4.

● (1130)

Unifor opposes the restriction on union policy grievances that could be the subject of an individual grievance. This appears to be a measure that could force bargaining agents to file—

The Chair: Okay—

Mr. Chad Stroud: —multiple individual grievances—

The Chair: Could you wrap up, please?

Mr. Chad Stroud: Thank you.

The Chair: Thank you very much, Mr. Stroud, for your presentation.

We'll begin members' questions with Ms. Nash for five minutes.

Ms. Peggy Nash (Parkdale—High Park, NDP): Thank you.

Welcome to all the witnesses this morning.

Mr. Yussuff, I'd like to start with you. Certainly, we have had a lot of discussion at this committee about omnibus budget bills and how they defy democratic discussion, debate, and fair consideration of the provisions within them.

I see you nodding your head, Mr. Thomas. I know you've spoken on that as well.

It seems to me that what you and others have raised, in addition to this, is the lack of consultation in developing this legislation. You've all made that point.

I want to ask you, do you think these changes are coming forward because Canada is facing a record number of strikes? Are labour relations completely out of control in this country? Can you describe very briefly the current state of labour relations?

Mr. Hassan Yussuff: I think labour disputes have been at an all-time low across the country, no matter what jurisdiction you're measuring across the country, so these changes are.... From our perspective, it's bizarre in the least to understand what the government is trying to fix regarding these proposed changes.

I think we've had a very stable climate in the federal jurisdiction for quite some time. The government recently negotiated an agreement with the public sector unions in negotiations, and I think collective bargaining is supposed to be a rigorous process. I have yet to understand why the government would make a unilateral change with a labour regime system that seems to have confidence and support from both sides of the table.

We have never been against changes, but obviously they need to be done in a process where it's informed and the parties are actually sitting down talking about what the implications might be. The government's long-term interest should be in stable labour relations, both with its unions and with its employees.

And this, from my understanding, is bizarre. It's like the government wants to be the player on a soccer field at the same time that they want to be the umpire. You can't be both. You have to make a decision about what role you want to play and figure out how you can enhance that role by building the relationship. This, I think, is fundamentally altering that balance that currently exists in the federal jurisdiction.

Ms. Peggy Nash: And it seems to have worked fairly well. Thank you.

I look at some of the economies around the world that are now among the most productive and whose economies are doing the best: some of the advanced European countries, and Germany, Brazil, and Korea, which have high rates of unionization.

I was struck, Ms. Benson, when you said that the Public Service Staff Relations Act says that this should be based on “mutual respect and harmonious relations”. Yet Mr. Thomas said that it seems that the public service is filled with people who “don't like going to work” and talked about “the horrors of...working in government employment”.

Which is it? Is it a horror show? Or is it harmonious relations and a decent place to work? Can you describe what's actually happening today?

● (1135)

Ms. Robyn Benson: You know, there are some difficulties. We've had 20,000 positions that have been cut. There were many more than that in terms of affected letters, so I think it's a bit precarious right now. There are services that have been cut from Canadians, such as the Veterans Affairs offices being closed, search and rescue being downsized, etc.

I believe—and I've spoken to many, many members over the last two years since I was elected—that they're very proud to serve Canadians. You know, those who are still in the workplace, where their colleagues have been cut and their colleagues are on employment insurance, are trying to do double and triple the work so they can continue to serve Canadians.

I don't agree that they're surfing the net. I don't agree that they're taking more sick leave. They're certainly going in to work, day in and day out, trying to serve Canadians the best that they can...based on a government that has cut programs and cut bodies from the workplaces.

I think it can be very difficult, but all members who I talk to are proud of the work that they've done. I'm 33 years a public service worker, and I'm very proud of that.

Ms. Peggy Nash: Thank you.

Just very briefly, Mr. Stroud, you're in marine search and rescue? Is that what your members do?

If so, could you briefly describe the work that your members do? And do they know the difference between an essential service and a non-essential service? Is that already covered by the law?

Mr. Chad Stroud: We're marine communications and traffic services officers. We work for the coast guard. We've been essential for quite some time.

We've been in the news quite a bit throughout the last couple of years because we've been cut pretty hard by the department. By the end of 2015, we're going from 22 marine communications and traffic services across the country to 11.

Ms. Peggy Nash: So you're essential but not that essential.

Mr. Chad Stroud: Correct.

The Chair: Thank you very much.

Thank you, Ms. Nash.

We'll go to Mr. Saxton, please.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Mr. Chair.

Thanks to our witnesses for being here today.

My first question is for the CLC representative, Mr. Yussuff.

Mr. Yussuff, in your opening remarks you said that due to proposed changes, the government can choose whatever service it likes as essential.

But there are definitions of essential service in place, so surely those definitions are not going to be changed.

Mr. Hassan Yussuff: I was responding to the President of the Treasury Board, who was interviewed on CBC here in Ottawa. When he was asked to describe how he would determine what portion of the workforce will be designated essential, he couldn't answer the question. He said he will decide when the legislation is passed sometime down the road.

So I can only rely on his statement that he's supposed to assure us as to how he's going to make the determination. He has yet to state publicly how he's going to make the determination.

Mr. Andrew Saxton: But there are definitions in place of essential service.

Mr. Hassan Yussuff: There are definitions, of course. It's been under the Canada Labour Code—

Mr. Andrew Saxton: So I think your statement is a bit misleading when you say—

Mr. Hassan Yussuff: —and I am very familiar with that.

Certainly I think my colleagues can speak directly to the public service in terms of how you designate that.

Mr. Andrew Saxton: Right. So your statement that the government can choose whatever it likes as essential is a bit misleading when there are definitions of what's essential in place. They're in the code of...subsection 119(1) of the Public Service Labour Relations Act.

My next question is for Gregory Thomas of the Canadian Taxpayers Federation.

Gregory, welcome. First of all, Bill C-4 will require that all forms of compensation are taken into account in the determination of fair compensation. This includes more than just wages; it includes other benefits that employees receive.

In your calculations of total overall compensation, you also obviously took into consideration other benefits in addition to just wages. Do you believe this will achieve fairness for both the employee and the employer, to take into consideration all compensation?

Mr. Gregory Thomas: Yes. It is an unfortunate aspect of the way government, so far, has chosen to describe the way it compensates government employees, that a misleading impression is created. Government employees have a substantial array of collectively bargained benefits: pension entitlements, sick leave, personal days, extended medical and disability benefits.

Taken together, as the Parliamentary Budget Officer pointed out, the present costs are in the neighbourhood of $115,000 per employee, on average. Something in the neighbourhood of $75 an hour is what it costs Canadians to have every government employee at work.

Sorry to take so long to answer your question, but yes, I think this will be a very fair way to portray this.

● (1140)

Mr. Andrew Saxton: Thank you.

Now, at a time when fiscal responsibility is paramount, in your opinion how significant is it that arbitrators be required to take into consideration Canada's fiscal circumstances when making their determinations?

Mr. Gregory Thomas: It's absolutely paramount. We have a situation in Ontario where we have a province that's the most indebted of any provincial or state government in North America, largely as a consequence of arbitrated settlements for government employees at the provincial and municipal levels.

The Government of Canada is in a difficult spot. It's trying to bargain with federal government employees who are seeing provincial government employees and local government employees...you know, ticket takers on the Toronto Transit Commission earning six-figure incomes. It's outrageous. It's ridiculous.

Absolutely arbitrators need to be cognizant of the government's ability to pay.

Mr. Andrew Saxton: Thank you.

My next question is for Benjamin Dachis at the C.D. Howe Institute regarding dispute resolution. As it stands now, I understand that with two resolution processes for employment-related grievances, individuals could technically shop around for the resolution they wanted. Not only does this lengthen the process, it also creates duplication in some cases.

My question to you is this. It seems logical to have one grievance, one review process. Is this consistent with mechanisms in the private sector? And have they been effective?

The Chair: A brief response, please, sir.

Mr. Benjamin Dachis: We've done no work on that, so I have no comment.

The Chair: Thank you, Mr. Saxton.

We'll go to Mr. Cuzner, please, for your round.

Mr. Rodger Cuzner (Cape Breton—Canso, Lib.): Thank you very much, Mr. Chair. It's great to be back here and to represent the C team.

I want to seize on something Ms. Benson said. As a member of Parliament for 13 years, I've never seen as much anxiety in some sectors of the public service as I've seen now, where those who are applying for employment insurance benefits are now waiting six and seven weeks, and eight weeks is not uncommon. At one time they used to wait three weeks.

It's because those processing those claims have been cut. There have been 600 positions cut, and those who are left behind are dealing with people who are trying to feed their families and make the decision between filling their prescription, filling their oil tank, or filling their fridge. The anxiety level of the whole experience has been elevated to a degree. It has to have an impact on the person who makes that call when you have a mother crying on the other end of the phone, wondering when her cheque is going to be processed. I think that has more to do with if there's any ill feeling within the public service. You might want to make a comment on that.

I know you see it as well with the marine communications. You might want to comment on that.

Ms. Robyn Benson: Thank you very much.

Certainly I appreciate that in terms of the EI, but there are many other departments that are suffering from that as well. We're doing a lot of work with respect to mental health in the workplace, because you have what I call the survivor syndrome. I don't know what others call it. When you're in a workplace of, say, 20 and you are processing EI cheques, old age security cheques, or child tax benefit —those benefits that Canadians deserve to receive on a timely basis —and then you go down to 5 individuals trying to do all of that work, it's almost impossible.

Certainly, in terms of services, though, I invite you to view our veterans video. You have veterans crying out in this country because you're closing Veterans Affairs offices right across the country. They are having now to travel five hours to see their caseworker. What's happening is just wrong. Our members are feeling that impact. Where they have worked weekly with a veteran who has post-traumatic stress disorder, that individual is no longer going to get the help they need.

It's not just EI, but certainly I thank you for that, because the person who finally receives their employment insurance cheque, as late as it is, also has to worry that the food on their table has been inspected and is safe for human consumption.

We have problems in this country.

● (1145)

Mr. Rodger Cuzner: Absolutely. Thank you.

Mr. Dachis, if you could elaborate on the study, did you do any international research? You said 60% of the times across-table negotiations end up with resolution. Are we similar to other countries in that regard?

Mr. Benjamin Dachis: Compared to the United States, for example, our strike incidence is higher. There's no question.

Mr. Rodger Cuzner: Considerably or...?

Mr. Benjamin Dachis: It's difficult to compare. There's a technical issue in terms of the types of strikes they look at versus the ones we look at in our data. We look at all strikes, whereas they only have data on large strikes. It's very difficult to have that comparison.

Our work is as close as you can get to an international comparison because provinces have complete jurisdiction over labour relations for their public employees. So you can compare nurses in New Brunswick, who have a completely different labour relations regime, to, say, those in Alberta, to public sector employees in Saskatchewan.

It's good to ask this.

Mr. Rodger Cuzner: Okay. I want to get one more.

The Chair: You have one minute.

Mr. Rodger Cuzner: The last time there were major changes undertaken within the public service and the labour laws around the public service was about 10 years ago. Compare that process, Mr. Yussuff, with what you're seeing now.

Mr. Hassan Yussuff: Well, that was a process. There is no process now. It's a unilateral decision made by the government through the insertion of these changes in the budget bill, and that's not a process. A process requires consultation and discussion with the parties to try to ensure that they appreciate that whatever change you may make to the current regime will improve the labour relations climate that both parties have to operate under.

In this particular case, there is no discussion or consultation.

Mr. Rodger Cuzner: Thank you.

The Chair: Thank you, Mr. Cuzner.

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

Mr. Gerald Keddy (South Shore—St. Margaret's, CPC): Thank you, Mr. Chairman, and welcome to our witnesses.

I want to preface my comments by saying that I think Canada is well served by a group of highly respected and highly qualified civil servants. That doesn't mean the system is perfect, and it doesn't mean there's not room to change.

Mr. Thomas, you brought up one especially egregious example of the system gone wrong. I'm going to assume that you're correct in what you've said. I'm sure you came to this committee with the evidence to support your claim. You stated that one civil servant was dismissed at one period of time and that it was proven they'd spent 75% of their time not doing their job. That worker then went to the labour relations board and was rehired.

Do you have evidence to back that claim up?

Mr. Gregory Thomas: Yes, he was reinstated by the public sector labour relations tribunal.

Mr. Gerald Keddy: The reason I brought that up is that it's important—and I think everyone and all of our panellists would agree—that we recognize that this means the pendulum has swung too far in one direction, and we're out of balance. Somehow or another, the government's job is to get back into that middle zone—not too far left and not too far right, but back into balance. You have to be able to get rid of incompetent employees somewhere along the line, and here, obviously, was an incompetent employee who could not be let go. That is a particularly egregious example.

Mr. Ian Lee, I love your quote on Runnymede. It was maybe a little bit out of touch, but that's also where we got the expression of grassroots, because the knights had to stand on the grass sod. So we all talk about grassroots, but it wasn't quite the legitimate example that we refer to today.

You say that for the first time, with these changes, we'll have a mandatory paper trail. Can you expand on that a little, and can you add to how important it is for everyone involved in any dispute that you have evidence presented, evidence that you can go back and look at to say, listen, this is exactly what happened here, this is not supposition, it's not something that someone made up, we actually have evidence that we can present?

● (1150)

Dr. Ian Lee: Thank you, Mr. Keddy.

The reference to Runnymede was really a reference to my op-ed in the *Ottawa Citizen* about a year ago on how English-speaking democracy has evolved over 800 years. It has evolved a whole series of checks and balances over a very long period of time. It wasn't a one-off on one magic day and then everything was fixed in stone.

To answer your question...and I really do believe this is an enhancement, not a derogation—not a diminution, an enhancement. Before, if a worker...and by the way, there's the provincial system. People may not realize that this is parallelled at the provincial level across Canada. There's a very similar system at the provincial level to what is being proposed at the federal level in this bill. I know, because I'm in university and I'm under the provincial system, with workforce committees and so forth.

The current system—and I've spoken to people privately about this—is very informal. A worker perceives danger and goes to the employer, and the employer doesn't agree. There's a lot of verbalizing going on, but there's no paper trail; there's no record. As an academic who studies public policy, I think having a paper trail, a record of decision, a record of conversations, a record of the evidence, is very important, as opposed to this verbal "I said this, you said that". By the time Labour Canada gets involved, it's six or eight months later and people don't remember what they said in the meeting when they were yelling and shouting at each other.

So what this is going to do is impose what I would call due process—really good, empirical due process on this whole process of adjudicating it. I really am mystified as to why public sector unions or private sector unions are opposed. They're going to have more leverage under this system than under the current system.

Mr. Gerald Keddy: Thank you for that answer. I'm out of time, but I wanted to give you time to expound on that.

The Chair: Thank you, Mr. Keddy.

Monsieur Caron, *s'il vous plaît*.

[*Translation*]

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you, Mr. Chair. Thank you all for your presentations.

I'd like to pick up on the ability to pay.

Mr. Thomas, you mentioned the importance of that. I, too, think it's important to recognize the fiscal capacity. But isn't the capacity to pay somewhat of a subjective argument? The ability to pay threshold varies depending on who you're talking to. A number of economists consider Canada to be in good shape when it comes to its ratio of debt to GDP and deficit control, as compared with the rest of the industrialized world, especially Europe and the United States.

In some cases, the government is creating obstacles for itself. When it came to power in 2006, it adopted certain measures. It reduced the GST from 7% to 5% and steadily cut corporate taxes. The resulting loss of revenue was estimated at somewhere between $12 billion and $15 billion, before the recession had even hit. And, clearly, the recession exacerbated the impact of those measures.

Future measures by the government could again turn out to be self-imposed obstacles. It could then use the ability to pay argument to force the public sector to accept conditions because of things we are going through now.

Would you agree that the ability to pay is a subjective issue, one that really depends on the individual perception each and every one of us has?

[*English*]

Mr. Gregory Thomas: Mr. Caron, one of the easily foreseeable consequences of this is that at arbitration hearings bargaining agents, unions, will bring evidence that taxation levels have been artificially suppressed or are too low and that the government in fact has the ability to pay. Those arguments will be made before an arbitrator. An arbitrator will also have to consider evidence from the government, and what we're going to end up with will be longer, more expensive arbitration hearings.

The Canadian Taxpayers Federation has always simply urged government, the government of the day of whatever party it is, to spine up at the bargaining table, to bargain hard, bargain effectively, and to bargain the toughest deal they possibly can on behalf of taxpayers. Along with the evidence that's been presented by the C.D. Howe Institute, we believe it is clear that taxpayers win when you have freely bargained agreements and strikes.

● (1155)

[*Translation*]

Mr. Guy Caron: Thank you very much.

I'd like to hear another perspective, so I'll ask Mr. Yussuff the same question.

Do you think the ability to pay argument is a subjective one? Do you agree that, if the government voluntarily reduces its fiscal capacity, that argument will be used by arbitrators during hearings?

[*English*]

Mr. Hassan Yussuff: Without hesitation, I think a freely bargained collective agreement has always been the right approach. The parties are consciously aware of what they're doing, and, more importantly, they make a decision regarding the final outcome of the collective bargaining process based on their ability to appreciate the different interests that need to be taken into consideration.

With regard to what the government has stated in the legislation, in my view, it will be a very biased process, because it's very subjective, with the government essentially determining.... The Minister of Finance would issue a statement to aid or abet the arbitrator in regard to the position the government is asking the arbitrator to conclude at the end of the day. So it could only be prejudicial to the neutral process that currently exists in the system.

[*Translation*]

Mr. Guy Caron: Ms. Benson, in a case currently before the Supreme Court, the Saskatchewan Federation of Labour is challenging the government on a very similar issue. We heard from witnesses who told us that the situation was the same and that, if the Supreme Court ruled in favour of the federation, provisions like the one we're discussing could be overturned. Do you agree with that view?

[*English*]

The Chair: Just a brief response, please.

Ms. Robyn Benson: Certainly, if the Supreme Court finds in favour of labour.... I asked the question myself of Treasury Board when I said it was going to the Supreme Court. I asked them why they would put this in the omnibus bill. Treasury Board indicated that they were seeking intervenor status. I said I was sure labour was going to win and then it would be a moot point.

The Chair: Thank you. Merci.

We'll go to Mr. Adler, please.

Mr. Mark Adler (York Centre, CPC): Thank you, Mr. Chair.

Thank you, witnesses, for being here today.

Ms. Benson, the previous Liberal administration in 1993–94, when it attempted to balance the budget on the backs of our country's most vulnerable, took the decision to eliminate 55,000 public service jobs.

How devastating was that to the public service and to government operations at that time?

Ms. Robyn Benson: Actually, sir, it wasn't very devastating because at that time they had what was called a LAD, or least affected department, and a MAD, or most affected department. Where they downsized, we were able to do an alternation process, and that's how the workforce adjustment evolved. Those who wanted to retire could retire with an incentive, and those who wanted to stay were able to alternate with them.

In actual fact, the number of individuals laid off from the federal government was less in the 1990s than what it is today with the 20,000 cuts.

Mr. Mark Adler: Interesting.

Could you please walk me through the process of dismissal?

Now, the public service is very professional in this country. On the whole, it does a pretty good job—an excellent job. However, not every public servant is excellent. When a public servant proves to be incompetent, or when they do something wrong or they're just not good, what is the process for dismissal for any kind of action taken against that employee?

What is the process for reprimanding or dismissing that employee, as the case may be?

Ms. Robyn Benson: Actually, it's an extensive process.

When individuals are hired into the federal government, that's an extensive process in and of itself. It's not simply an interview. Usually, there's a written examination, then an interview, then reference checks. The individual comes in and, depending on the classification and where they're working, they're on probation. There is a probationary period. It may be six months, it may be a year. Throughout that process, the manager must provide written feedback to the individual—they have to provide training and written feedback. If you're on probation for a year, then it's at the first month, at six months, and at the final month, to say whether you're rejected on probation, which means you either leave the federal government or you stay.

If somebody, after many, many years, is perhaps not working to what their expected production is, for example, then you have to look at whether there is retraining, there is an accommodation issue, or that other things need to happen. Quite frankly, it's very difficult to get into the federal government, and many of my members are term employees for many years. Technically, if you're a term for three or four years, in order to stay on, or in order to be rehired, you're under performance evaluation all the time.

I find it really ironic that there are comments from the President of Treasury Board that not enough individuals are fired from the federal government. Quite frankly, in order to work for the federal government, it's quite a process to get in, and then there's a process of performance management, which has been around as long as I have been there, 33 years, where every year my manager tells me whether I'm doing a good job.

I question why we're so worried about what percentage has been released, when in fact it's very vigorous throughout the process.

● (1200)

Mr. Mark Adler: In Mr. Thomas's example of the employee who spent most of his time surfing the Internet and just not doing his job, what would have been your reaction to that employee? Would they have been dismissed under your watch or would something else have happened?

Ms. Robyn Benson: First of all, I find that very hard to believe. I would question what the manager is doing and why the manager is getting a performance bonus if in fact they have employees surfing the net all day. That would be my first question.

In the workplace where I come from, the Canada Revenue Agency, you don't have that luxury. You're processing individuals' tax returns. They want their refunds, quite frankly, as do the corporations want their refunds. In all of Treasury Board, the employees, I believe, are honest, hard-working individuals. I represent about 160,000 to 170,000 who work directly for Treasury Board, so if there is one person, then I have to shake my head.

The question begs to be asked, where was the manager?

The Chair: Thank you.

Thank you, Mr. Adler.

Is this a point of order, Mr. Cuzner?

Mr. Rodger Cuzner: I think it is. You can rule on it, though. For the benefit of the committee, and to address the question posed by my colleague Mr. Adler, there is a very extensive and comprehensive report that was tabled by the Public Service Commission that underlines Ms. Benson's responses—

The Chair: Okay, Mr. Cuzner—

Mr. Rodger Cuzner: Is that not a point of order?

The Chair: No. As a very experienced parliamentarian who is celebrating his anniversary tomorrow, I think you know that's a point of information. Points of order deal with process matters. Thank you.

Mr. Rodger Cuzner: My first point of order in 13 years.

The Chair: Thank you.

Mr. Rodger Cuzner: And it wasn't even a point of order.

Voices: Oh, oh!

The Chair: I'm going to Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Thank you, Mr. Chair.

Thank you to all of our witnesses. I'd like to ask the questions I'm going to raise to Mr. Yussuff of the Canadian Labour Congress, Ms. Benson, and Mr. Stroud. I'd invite each of you—I only have five minutes—to comment on a couple of things.

The first one is a comment made by Mr. Thomas of the Taxpayers Federation, who referenced an individual employee and referred to what he characterized as a "toxic environment" within the public service. My questions to the three of you, if you wish to reply, are: do you accept that characterization that the public service is a toxic environment, and will the changes to the PSLRA make a difference, positive or negative, in that regard?

Mr. Hassan Yussuff: I think on the point Mr. Thomas made, this is one example in a very large public sector. With all the employees, it begs the question as to why that would be the point made here.

Listen, we live in a society where none of us is perfect. The reality is there's a process within the government to deal with individuals who are not performing their responsibility. I think his exposé speaks to that reality. I don't think it's a toxic environment.

In regard to the changes, I think you have a fairly good, balanced system right now in terms of the public service staff relations legislation. The way the government has gone around altering and amending it will make it unbalanced and unequal for the parties to seek remedies and solutions to solve their problems. You need to get some confidence into the system to ensure that both sides can feel that the system is fair and balanced. I think this completely alters that relationship.

● (1205)

Mr. Murray Rankin: Either Ms. Benson or Mr. Stroud?

Ms. Robyn Benson: What I'd like to say is I think the President of the Treasury Board, quite frankly, enhances the toxic work environment. He is out in the press talking about his employees, my members, abusing sick leave, surfing the net. He has utter disregard for them, and I think, quite frankly, he is disrespectful.

I say that here in all honesty because I've said that to him. I've had a meeting with Mr. Clement and I asked him to cease and desist, because that makes your work environment that much worse. Do you want to go to work for an individual who is on CBC talking about how you're not doing your job, when in fact many of our members have unpaid overtime, and the list goes on?

What will happen with Bill C-4, because there has been no consultation—and I'm hoping you remove those two sections from the bill—is that once again it shows an utter disrespect for the membership. They know when we've had consultation. We actually go out and talk with our membership in terms of preparing our consultation and our briefs—for example, under the Public Service Modernization Act.

Quite frankly, our members are going to work to serve Canadians, and if there are issues within the workplace, it's because of comments made by the President of the Treasury Board.

Mr. Murray Rankin: Thank you.

Do you wish to add to that, Mr. Stroud?

Mr. Chad Stroud: Yes. I would just like to reiterate what Ms. Benson said. It's not so much that it's a toxic environment, but right now it's one of those environments where a lot of our members are very unsure. They are unsure if they're even going to have a job by the end of 2015. You take a look at the last contracts we've had; the amount of money we got didn't even cover the inflation rate at the time.

To say that it's toxic, no. As Robyn said, it's hard when Tony Clement is on TV all the time, putting us down and making us all feel fat and lazy. Quite frankly, all we do is work our butts off for this government.

Thank you.

Mr. Murray Rankin: Thank you.

I have one minute. You can see the dilemma I have in trying to review this legislation in one minute.

Mr. Steven Barrett, who is going to appear before us, I believe is counsel to the CLC, and is certainly one of Canada's most famous labour lawyers. In his presentation, in writing, he says this about essential services, and again I'd invite your comments:

> Bill C-4 revises the treatment of “essential services”. Most importantly, it gives the Government the exclusive right to determine whether “any service, facility or activity of the Government of Canada is essential because it is or will be necessary for the safety or security of the public or a segment of the public”....

And he says that it eliminates “any recourse for unions to the PSLRB in the event of a dispute”.

The Chair: Question?

Mr. Murray Rankin: What will the impact be if you no longer have recourse to the LRB?

The Chair: Okay, we're out of time, but maybe we can get a brief response.

Mr. Murray Rankin: Anyone who wishes can respond.

The Chair: Ms. Benson.

Ms. Robyn Benson: In the past, the employer would say they want these individuals designated. We would say no, there would be a discussion, we would go, and the decision would be made. Now the government will have the unfettered right to determine who is deemed to be essential and who is not, with no recourse.

The Chair: Thank you.

We'll go to Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you all for being here. It's a very interesting conversation. I think you've brought some very interesting points out, Ms. Benson.

The fact remains—and this is the thing that I struggle with—Mr. Thomas has given us some comparisons of the private and the public sector, and the gap is really widening. I come from private industry. I have a business where we pay professional people and we can't afford to pay them the public sector rate.

I'm reminded of the old song by Joni Mitchell: “Don't it always seem to go that you don't know what you've got till it's gone”. Mr. Stroud, when I look in the Chatham area and your union, which the CAW joined, I see we have a legacy of plants related to the auto industry that just packed up and left. That's what happens in private industry when you can't pay your employees what the demands are. I think of your legacy funds. I think of those areas that cause concerns and the demise of some of these auto industries.

At what point, Ms. Benson, do you talk to your members and tell them they need to line themselves up with the private sector? When you say that the government is beating up on the union, remember that we represent all citizens, those people who pay taxes, those people who are frustrated with these types of wage earnings when they can't even get close to that. At what point is it your responsibility to talk to your union members and say we need to line up with the private sector?

● (1210)

Ms. Robyn Benson: Over the last several rounds of negotiations, I think we have been fiscally responsible with our membership and with the government. I think we need to step away from this notion about the private sector versus the public sector. I can tell you, I have members who make less because they work for the federal government than they could make in the private sector, and we have studies to prove that. You take a heavy-duty mechanic from Moose Jaw, Saskatchewan, who works at the base out there, works for the federal government—he makes less than the heavy-duty mechanic down the road.

I'm sorry, sir, but when you take a look—

Mr. Dave Van Kesteren: That's not a fair comparison. As Mr. Jean would say, that's what they're paying.

If we look across the board, if you were to make that comparison in Chatham, Ontario, my riding, you wouldn't find that. I'm not begrudging the public service. As has been said here a number of times, our public service is excellent, and we have excellent people. The fact of the matter is, it's the responsibility of government to keep the lights on. At what point is it our responsibility to make sure that we have parity and that we have some equality there?

Ms. Robyn Benson: Do you think, sir, that this should be a race to the bottom? Do you think that your employees should be making less? From my perspective, as the president of the PSAC, I don't believe that my membership deserve concessions. I believe they have strong collective agreements. I believe that they do a good job for the federal government. I think we should go into negotiations open-minded and have good solid discussions.

But to put within a budget bill changes to the Public Service Labour Relations Act, I think that's wrong. I don't believe that shows transparency. I don't believe that shows honesty. It certainly doesn't show that you want to have consultation with the stakeholders, which are the unions and others.

Mr. Dave Van Kesteren: How much time do I have, Chair?

The Chair: You have about 40 seconds.

Mr. Dave Van Kesteren: I guess I'm not explaining myself well, and maybe I'm not getting my point across.

Let's talk about pensions. About 65% of Canadians are going to have CPP; they're going to have to wait until they're 65. If you look at the comparison in the public sector...and I know that in the private...but as I said to Mr. Stroud, that's falling apart at the seams. At what point do we say we need to have a system that's fair across the board? Is that something that you should discuss with your union members? Is it something that the—

The Chair: A brief response, please.

Mr. Dave Van Kesteren: —government should be pushing forward?

Ms. Robyn Benson: I think the government should have consultation. I think Treasury Board should have consultation with respect to the benefits for their employees, my members.

The Chair: Thank you.

Thank you, Mr. Van Kesteren.

[*Translation*]

Mr. Côté, go ahead.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you, Mr. Chair.

Mr. Lee, even though I have a bachelor's degree and a background in science, I spent 12 years as a labourer in a warehouse. I loaded and unloaded delivery trucks alongside several guys who hadn't finished high school. I worked year-round in extreme conditions, in temperatures ranging from thirty below to plus thirty.

I also worked in Quebec's civil service, where I belonged to a union. So I've seen the issue from both sides. I must say I can't get over the levity in your presentation. You tried to play on our emotions by comparing the conditions of minimum wage earners with those of public servants. And yet, on April 25, that did not stop you from staunchly defending university professors, arguing they deserved their salaries—which are considerably higher than others'—as well as their status and their notoriously lower teaching load.

How can you address this committee with such levity?

● (1215)

[*English*]

Dr. Ian Lee: I wasn't defending university salaries on April 25 whatsoever. I think you brought it up, if I recall; I don't have the transcript. You brought it up in a reference to some comparative thing. I said that's under separate collective bargaining, and professors are unionized in most universities—not all universities—and in most colleges.

To come back to your primary point, you said it wasn't serious to point out the gap, the empirical wage gap, between the minimum starting salary in the private sector and the public sector. Maybe you're not familiar with comparative statistical analysis. Because I'm a tenured professor and I don't consult, I spend most of my time every day wandering through StatsCanada and Labour Canada databases. That's what I do all day long. I just look at government databases all the time and I look at comparative analyses from the OECD and so forth.

So to say that it's not relevant to show the minimum starting salary in the private sector, which is the floor of the floor of the floor, so the floor of the floor of the floor in the public sector is something I don't—quite frankly, I don't understand your question. Of course it's comparative, of course it's legitimate, and of course it's empirical.

[*Translation*]

Mr. Raymond Côté: Mr. Lee, I studied physics at university, so I'm fairly up on comparative statistics. That said, I'm going to move on to someone who takes this more seriously.

Ms. Benson, at the committee's first meeting on Bill C-4, with public servants in attendance, we discussed services defined as essential. I asked Dennis Duggan what recourse the bargaining unit, the union and employees would have to challenge the government on an essential service designation. And this was what he said:

[*English*]

> As I mentioned earlier, the initial process would involve a consultation period with the bargaining agent in question, but beyond that it would be judicial review.

[*Translation*]

What do you make of this shift towards the courts, this threat to unilaterally designate any given function as an essential service? In fact, Mr. Duggan even went on to say that no class of employment in the federal public service could be excluded.

[*English*]

Ms. Robyn Benson: I thank you for that question. I'm going to ask Ms. Bramwell to come up as the technician to answer that, please.

Ms. Edith Bramwell (Coordinator, Representation Section, Public Service Alliance of Canada): The way in which Bill C-4 changes essential services is such that there is no definition anymore according to which the government can be held accountable as an employer when it designates its employees as essential.

What we had in the previous legislation was a reference to the safety and security of the public. The definition is actually somewhat broader than that, but those are the key terms. That's gone now, and what we have is wording that says that an essential service under clause 294 of Bill C-4 is anything the Government of Canada has determined is essential.

That has a very broad sweep in both directions. It means that the Government of Canada, as employer, can unilaterally declare an entire bargaining unit of any type of employee essential. I think that's what has been focused on.

It can also say that any type of service provided to Canadians is not essential. For example, the government could decide that the production of EI cheques, a topic which was referenced by the speaker, is not essential.

The Chair: Thank you. Merci.

I'm going to go next to Mr. Jean, for your round, please.

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

Thank you to all the witnesses today who have come to provide testimony.

I want to say, Ms. Benson, in reply to something you said to one of my colleagues, that it's not a race to the bottom. But it's not a race to the top, either.

I think it's about fairness and competitiveness, and that's why you have to look at the private sector. I'm from Fort McMurray. I've lived in Fort McMurray my entire life. I've operated and owned about 15 businesses there, everything from car washes to a law firm. I was a lawyer there for 11 years, and I've never seen more money paid for less work in my life than what I've seen generally around here. I'm not saying it's everybody. I'm not saying that at all, because some people work like dogs, bluntly, as was said by Mr. Stroud, and provide a tremendous service.

I find that, frankly, it's the exception rather than the rule who are not providing what they need to provide. I think that exception should be dealt with differently.

I do have some questions for Mr. Thomas. In particular, Mr. Thomas, I want to talk about the private sector because I think that's the only fair comparison for the public sector, not just on work but on basically what they provide to the economy.

I asked some questions like this yesterday.

There are about 1.1 million small businesses in Canada; 48% of the people in Canada are employed by small businesses, just over 5.1 million people; 86% of Canadian exporters were small businesses; 42% of the country's private sector GDP are small businesses; and 28% of the country's total GDP came from businesses employing fewer than 50 people. It's a very significant impact.

The most startling thing is—and I think, Ms. Benson, you should be aware of this—the average wage of these small business owners is $38,000 a year. In most cases, they can't collect EI or maternity benefits. They don't get sick days. They pay their taxes, they do what's necessary. I've heard some people say that they take cash under the table. I frankly find it astonishing that people believe that, because I've never found that. I find that small business owners are the most honest people that I've dealt with, because they understand how hard it is to make a buck, and they want to utilize taxes or what taxes give you, roads, bridges, streets, hospitals, etc.

Can you comment on that, in relation to competitiveness? I, bluntly, am astonished at the wages. As a lawyer, I had people in Fort McMurray with the highest income in Canada at $185,000 per household. As a lawyer, I had people make much less money than what the public service starts people at, for less experience.

● (1220)

The Chair: This question is for whom?

Mr. Brian Jean: It is for Mr. Thomas.

The Chair: This is for Mr. Thomas.

Mr. Gregory Thomas: There's no question that people working outside of government have to make do with considerably less, certainly in extended benefits, and certainly in pension benefits.

So much has been made of these 19,000 reductions in government employment. But in the space of six months, from 2008 to 2009, over 440,000 people lost their jobs—when government employment at the federal level was going up by 8,000 or 9,000. They didn't get committee hearings; they didn't get to come and plead their case. People lost jobs, they lost homes. That was a devastating period. People who went through that are unsung. They don't get hearings, tribunals, and appeals.

Going back to this case from the 15-page report, when this fellow was reinstated with his six-figure income, his rank, his classification, and his benefits, the adjudicator said he was partly acting through boredom and insufficient work. That was part of the rationale for the reinstatement.

Mr. Brian Jean: Mr. Thomas and Mr. Lee, would you suggest that these changes by our government are going to bring it anywhere near a competitive process? Or is it going to remain the same—that competitively the public sector gets a much higher wage and benefit package than the private sector for the same work?

The Chair: Can we get a brief response from either one of you?

Mr. Lee first.

Dr. Ian Lee: To respond to your question, and the comment by Mr. Keddy earlier, prior to collective bargaining, public servants were paid far less and they were dealt with very badly.

Now, over the past 40 years, the pendulum has swung the other way and gone to the other side. Now we're in the middle of a rebalancing of the pendulum. Will this one bill bring back equity or balance? No, to use a word that's been used a lot today, it's a process. That's got to continue in the future, not because we're bashing public servants, but because it's not fair to those....

I'm in the public service, and as Mr. Caron noticed, I'm paid very well, thank you very much. I'm not worried about me. I'm worried about those people in the private sector and small business who get lousy salaries, no pensions, and no sick leave. Those are the people I care about. If we care about social justice....

Mr. Brian Jean: Mr. Lee, I appreciate your answer.

I just want to say, wasn't it 13 or 14 years ago that we saw the biggest reduction in public servants, under the Liberals, that we've ever seen in this country?

The Chair: Okay.

Dr. Ian Lee: I published an article on how Ottawa spends, in 1997. It was published by McGill-Queen's Press in this article called “Pink Slips and Running Shoes”. I documented it.

It was the largest downsizing in Canadian history—public sector or private sector. That article is on the record, with all the numbers.

The Chair: Thank you very much.

Mr. Hoback, you have time for about a four-minute round.

Mr. Randy Hoback (Prince Albert, CPC): Thank you.

Thank you, witnesses, for being here this morning.

Mr. Lee, I'm curious. I get concerned when you start comparing numbers at a macro level, like Mr. Thomas saying about $117,000, give or take a thousand, is where the public service is going to be versus the private sector.

Have you done a classification comparison? You said you look up numbers and you're independent.

● (1225)

Dr. Ian Lee: I am doing that right now. I've been breaking it down, and it's a bit misleading to use that aggregated average.

I'm going to say something that's probably going to annoy two of the witnesses here. The imbalances at the lower level...and you already know that not only anecdotally, but the minimum starting wage in the private sector is about one-third of what it is in the Government of Canada.

There is a crossover. I have seen some studies, and one is from the Conference Board, that suggest the crossover is somewhere around director general. Those at the DG and above are actually paid less in the Government of Canada than in the private sector. You can get $5 million or $10 million at the very top in a large corporation in Toronto.

But at the lower levels, empirically, from everything I've seen so far, that's where they are paid more than in the private sector. The public sector at the lower levels are paid more than in the private sector at the lower levels.

Mr. Randy Hoback: I'm done.

Mr. Jean, do you have another question?

Mr. Brian Jean: Mr. Chair, I have one question.

The Chair: Okay, Mr. Jean.

Mr. Brian Jean: Ms. Benson, from my perspective, I would think it would be better to get rid of the dead weight out of the public sector who are causing this bad reputation, which is a very small portion, and to deal with those people who are unhappy or who feel they are unchallenged or lazy, or whatever the case may be—they don't feel they have the time.... I think it would be better for everybody, for taxpayers. first of all, and of course your members are taxpayers, but also for the workers in the public service who do work their butt off, because a lot of them do. I see it in this place; 90% of the people are working extremely hard and are underpaid for what they do based upon the hours they put in.

There is that small portion who take advantage of the system. Wouldn't it be better to get rid of those people, to find a way to get them out of the system so they don't give this reputation, this contention, between government and public servant, and also public servant and, bluntly, the private sector—the 50% of Canadians who are employed by the private sector? Wouldn't it be better to do that?

Ms. Robyn Benson: Well, Mr. Jean, there is a way to do that, quite frankly, and managers need to manage. We have never said that managers should not manage. Our members welcome that.

When Mr. Clement announced he was going to have performance management, I quickly said to him that he's had that, at least for the 33 years that I have been with the federal government.

Mr. Brian Jean: But in the case of what Mr. Thomas brought up —

Ms. Robyn Benson: Where was the manager?

Mr. Brian Jean: I agree, but it's almost impossible—

Ms. Robyn Benson: That's the question that begs to be—

Mr. Brian Jean: Isn't it true that it's almost—

The Chair: One at a time.

Mr. Brian Jean: Thank you.

Isn't it true that it's almost impossible to fire public servants after a certain stage?

Ms. Robyn Benson: No, it's not. I beg to differ.

Certainly if managers do their job, then they would be able to do that.

Mr. Brian Jean: Could you comment on that?

Mr. Gregory Thomas: The numbers speak for themselves: fewer than 100 for cause dismissals in a workforce of 193,000 people in a year.

Mr. Brian Jean: There you go.

Ms. Robyn Benson: You have very dedicated employees working for the federal government who have rigorous tests in order to get their position.

A voice: Nobody buys it.

Ms. Robyn Benson: Well, my members do buy it.

I think it's disrespectful.

The Chair: Thank you.

Mr. Dachis, can I get you to comment on the essential services discussion we've had?

You've heard comments about what the legislation does. As Mr. Saxton pointed out, the definition of essential services does not change. Do you have a comment on the essential services changes?

Mr. Benjamin Dachis: We can look at evidence in other provinces and at the federal jurisdiction as to, first of all, what you expect to happen and what does happen. What you can expect to happen with an essential services designation is that the costs to the employer of a strike become lower, in the sense that a minimum level of services do continue to be provided. That reduces the incentive for both sides, especially the employer, to come to the bargaining table.

There is some potential evidence that you do see slightly longer strikes. It's not exactly conclusive because there aren't a lot of strikes in the sectors that are covered by essential services designation. But you see this in the results of essential services workers having less bargaining power and lower wage growth.

The Chair: Do you have a comment on the issue of whether the definition of essential services still then binds the government if this bill passes? You've heard clearly from at least two witnesses today, and my understanding is that they would say that definition is no longer applied if this legislation passes.

Do you have a comment on that?

Mr. Benjamin Dachis: No.

The Chair: All right. We are unfortunately out of time for this panel.

I want to thank all of our witnesses for being here, for a very interesting, lively discussion. We appreciate that very much.

Colleagues, we will suspend for a couple of minutes and bring the next panel forward. Thank you.

● _____ (Pause) _____ ●

● (1235)

The Chair: Order. This is Tuesday, November 26, 2013. This is our second panel here today.

First of all, we have, as an individual witness, Mr. Steven Barrett, managing partner at Sack Goldblatt Mitchell. Welcome to the committee.

We have, from the Association of Justice Counsel, the president, Ms. Lisa Blais. Welcome. *Bienvenue*.

From the Professional Institute of the Public Service of Canada, we have the general counsel, legal affairs, Madame Isabelle Roy. *Bienvenue*.

We have three by video conference, so we'll do our best to manage this.

We have, first of all, from Guelph, Fair Pensions for All, Mr. Gareth Neilson. Mr. Neilson, can you hear me okay?

Mr. Gareth Neilson (Director of Communications, Fair Pensions for All): Yes, sir, I can. Thank you.

The Chair: Okay, thank you.

By video conference from Edmonton, my hometown, we have Mr. Robert Murray, vice-president for the Frontier Centre for Public Policy. Mr. Murray, can you hear me okay?

Mr. Robert Murray (Vice-President, Research, Frontier Centre for Public Policy): Yes, sir, I can.

The Chair: Okay. Welcome.

Lastly, from Windsor, Ontario, by video conference we have Mr. Robert Pruden, vice-president, labour management strategy.

Welcome. Can you hear me okay, Mr. Pruden?

Mr. Robert Pruden (Vice-President, Labour Management Strategy, Postmedia Network Inc., As an Individual): Yes, I can, thank you.

The Chair: Thank you all for being with us here. You each have five minutes maximum for an opening statement, and then you'll have questions from as many members as possible.

We'll begin with Mr. Barrett, please.

Mr. Steven Barrett (Managing Partner, Sack Goldblatt Mitchell LLP, As an Individual): Thank you

Thank you for inviting me to appear.

I've been a labour lawyer involved in collective bargaining for government employees in the broader public sector for almost 30 years. I also have considerable experience in appearing before the Supreme Court of Canada in Charter of Rights cases. I hope my remarks will be helpful to the committee.

I did watch the webcast of the earlier hour and a half, so I hope I won't be unduly repetitive.

Parliamentary tradition, which has been followed and respected historically over the past 50 or so years, by both federal Liberal and Conservative governments, has been to propose legislative changes to the rules governing collective bargaining for federal government employees only after expert independent study and widespread consultation. As the Canadian Bar Association pointed out in a submission to this committee, proposing and then burying fundamental changes to collective bargaining in omnibus legislation hardly respects this tradition.

But this isn't just about respect for tradition and democracy. It's also about widespread recognition that in labour relations, given both the sensitivity of the collective bargaining balance and the importance of the employee and employer interests involved—as well as the public interest—changes to the existing scheme should only be made after receiving expert independent advice, ensuring widespread meaningful input, comment, and debate. This is especially the case, members of the committee, where one of the parties to the collective bargaining process—the employer—has, respectfully, an inherent conflict of interest as both employer and legislator, and so normally wants to ensure that it isn't acting and doesn't appear to be acting in a one-sided manner.

For this reason, while you can never guarantee a mutually acceptable agreement on labour law reform, and government obviously has the right ultimately to act, the Canadian tradition has been for a good faith effort to be made. Against that standard, Bill C-4 falls well short—at least the labour relations we're talking about. For the first time in the history of legislative reform to federal public service collective bargaining legislation, the government, as employer, is proposing to use its legislative powers to unilaterally alter a long-standing balance in the legislation without any prior consultation, study, or even a half-hearted attempt at building and achieving consensus.

Now, it's an axiom in labour relations, born of real-life experience, that balance and mutual acceptability is of utmost importance to collective bargaining stability, industrial peace, harmony in the workplace, and basic fairness—all goals that we share.

Here we have the employer using the government's legislative authority to undo and upset the rules that the parties have lived with for almost 50 years, since 1967, especially when it comes to choice of procedure, a prominent feature of the federal model: interest arbitration or strike conciliation. Parliament decided on a choice of procedures model, which balances respect for the right to strike with the recognition that many public servants are averse to what they consider to be the adversarial, more militant strike/lockout method, so that arbitration was a sensible and constructive choice to give them for resolving disputes.

No one is suggesting that the existing rules are perfect. Some bargaining agents believe that certain rules, including the government's power that it already has to determine unilaterally the level of essential services, are problematic. Others believe the Canada Labour Code should apply. And of course the employer no doubt has changes that it would like to see made.

No one is opposed to true and authentic modernization or to balanced changes. But if change is to be made, it ought to be carefully thought out. As detailed in my brief and in the submissions of many others, the proposed legislation can only be described as an attempt by one party to the bargaining process to rewrite the rules of the game in as lopsided a manner as could be conceived.

If we were in a schoolyard, it would be viewed as bullying of the worst kind. Closer to home, it's like Senator Duffy being permitted to rewrite and legislate the Senate's residency requirements.

Voices: Oh, oh!

Mr. Steven Barrett: The absence of any kind of balance and any attempt to achieve mutual acceptability and consensus is corrosive of good labour relations and is likely to lead to substantial labour relations workplace instability. We know from bitter experience that employees who believe that they are working under unfair and arbitrary rules for determining their employment conditions will inevitably find ways to express their displeasure and unhappiness, resulting in low morale and lost productivity.

The proposed legislation stacks the deck in favour of the employer and does so in many ways. I want to focus quickly on three of the most important.

● (1240)

First, it stacks the deck by providing for unreviewable designation of essential service work.

The Chair: Mr. Barrett, we're at five minutes. I do want to get to members' questions after the presentation, so if you can wrap up, it would be very much appreciated.

Mr. Steven Barrett: I'll wrap up.

Second, it eliminates arbitration unless 80% of employees are designated essential, and therefore it potentially eviscerates any meaningful right to bargain.

Third, even where 80% are designated, arbitration boards are to give preponderant weight to the government-stated budgetary policy.

I'm sure in the questions I'll have time to talk about the international case law on this and the Supreme Court of Canada's view.

Let me conclude by simply saying that, ironically, just two years ago, Parliament received the report of the five-year review, and after receiving broad input from stakeholders and experts, it concluded, when it came to the current collective bargaining rule, that "generally speaking the legislation adequately supports collaborative labour-management relations". There was no suggestion from the committee or for that matter from the government itself that a complete and unilateral overhaul was justified, necessary, or appropriate.

I look forward to your questions.

The Chair: Thank you for your presentation.

Next we'll hear from Ms. Blais, please.

Ms. Lisa Blais (President, Association of Justice Counsel): Thank you. I want to thank the committee for this opportunity.

The AJC is the exclusive bargaining agent for 2,700 federal lawyers. We're prosecutors, we're counsel at the Department of Justice, and we also provide legal services to various tribunals and agencies.

Before becoming a so-called union boss, I was a drug prosecutor enforcing the government's tough on crime legislation. I will be returning to my prosecutorial role at the end of my term with the AJC.

To begin, I would be remiss as the representative of federal lawyers if I didn't address the issue of due process. I know you've heard a lot on that, but it bears repeating because it's so fundamental to who we are as Canadians. Make no mistake, using massive budgetary omnibus bills to significantly alter several long-standing and complex pieces of legislation is an assault on due process.

Bill C-4 contains many elements that have absolutely nothing to do with budgets or finances. Respectfully, we question how a bill that is 308 pages long, contains 472 separate clauses, affects at least 29 different pieces of legislation, and amends or repeals 70 legislative measures can seriously be considered a true budget bill, or seriously considered at all, folks, in light of time constraints and debate limits imposed on this entire process.

We know that omnibus budget bills are not new. In 1994, then MP Stephen Harper criticized such a bill—which was 21 pages and entirely related to budgets—as being, and I quote, "so diverse that a single vote on the content would put members in conflict with their own principles".

The scope and breadth of Bill C-4 negates your ability to even know its full impact. Further, division 17 of the bill brings drastic amendments to the PSLRA, a fundamental piece of legislation, albeit not perfect, that has been a reliable tool for labour relations for the past 50 years. These amendments, make no mistake, denude employee protections and powers. I will elaborate upon that in a moment.

Due process has taken a hit, folks, since the law reform commission was forced to close its doors in 2006. Never have we needed more such an informed and independent voice. Contrary to past practice, these amendments were crafted without any consultation with any stakeholder—not with unions, not with labour law specialists, not with academics, not with anyone.

We question this bill's constitutionality. Advanced consultations would have minimized the vulnerability of these changes to challenges under paragraphs 2(b) and (d) of the Canadian Charter of Rights and Freedoms. Our highest court has confirmed on several occasions that collective bargaining is the fundamental right of every Canadian employee. This right can be limited only minimally, and only in exceptional circumstances. This bill bestows upon the employer the exclusive right to determine who can arbitrate, who can strike, who is essential.

Further, when a union is allowed to participate in interest arbitration, the adjudicator's ability to consider relevant factors has been severely constrained to the point where it can be argued that the outcome is already determined. Bill C-4 contravenes several of our international labour obligations as well.

Let's talk about costs. You are a finance committee, and that's the lens through which you are all tasked to look. For a government that constantly trumpets its desire to streamline operations and save money, Bill C-4 will have the opposite effect. Let me tell you why. Changes to the PSLRA remove the workers' right to choose between interest arbitration and strike action. What does that mean? Forcing federal workers to strike rather than go the interest arbitration route will affect the services Canadians receive and serve to frustrate labour relations even further.

We need only remember the Quebec prosecutors and civil lawyers who were recently forced into this exact situation.

● (1245)

The Chair: You have one minute.

Ms. Lisa Blais: The latter had the right to strike forced upon them in 2003 by the Charest government as a way to avoid binding arbitration. It culminated in strike action by almost 1,500 Quebec government lawyers in February 2011. The situation broke the bond of trust between these lawyers and the government and jeopardized many serious criminal prosecutions.

On a completely practical level, how can the government save money by forcing employees to strike? I just referenced the importance of preserving the right to strike. The point is, Bill C-4 will force some of us to strike. Let's remember that when unions were first given this choice in 1967, it was meant to address the imbalance of power in the federal public sector context. Arbitration has consistently been the preferred route for the AJC and for most public sector unions. This civilized approach to labour disputes preserves services to the public and ensures federal workers and their families are treated with respect, dignity, and fairness.

The Chair: Okay, thank you.

Ms. Lisa Blais: Two more points.

The amendments will overcomplicate the grievance process. You now have a situation where you cannot file group complaints when you're looking for retroactive remedies, so you're going to have multiple and duplicated services.

Finally, the chairman of the Labour Relations Board will now have the power to review the decision of the arbitrator. How can this be streamlined? How can this be efficient when you're adding an extra level?

The Chair: Okay, thank you.

Ms. Lisa Blais: So this is modernization? Hardly. This bill takes labour relations back decades. From a cost analysis perspective—

The Chair: Okay, thank you.

Ms. Lisa Blais: —it is difficult to see how this scheme can save taxpayers any money.

Thank you.

The Chair: Thank you.

I'm sorry for cutting you off, but I want to get members' questions in. If we extend the witness time, then we are going to have to cut out some members' questions.

Ms. Lisa Blais: It's our only kick at the can.

The Chair: You will have many opportunities during the question period.

Mr. Murray Rankin: We're also lawyers, so—

Voices: Oh, oh!

Ms. Lisa Blais: Yes, it's hard.

The Chair: Right.

We're politicians, so we're even worse.

Voices: Oh, oh!

The Chair: We'll go to Ms. Roy, please.

Ms. Isabelle Roy (General Counsel, Legal Affairs, Professional Institute of the Public Service of Canada): Thank you, Mr. Chair.

Thanks to the committee for the opportunity to make these submissions.

The Professional Institute of the Public Service of Canada represents about 55,000 professionals across the country in the public sector, most of whom work in the federal public service. Our members are directly affected by Bill C-4, in particular divisions 17 and 18, which amend the PSLRA and the PSEA, as well as the Canadian Human Rights Act.

It is our contention that the proposed legislation significantly impairs the right to collectively bargain, to the point where it in fact constitutes a violation of the freedom of association, protected by paragraph 2(d) of the Canadian Charter of Rights and Freedoms and the International Labour Organization's convention 87, among others.

Our criticism starts with the process itself. Like my colleagues, we feel that burying such important amendments in omnibus legislation is certainly not the proper way to go about this. Instead, the changes should have formed part of a stand-alone piece of legislation that would have allowed for the meaningful consultation with subject-matter experts that we're used to in this country when it comes to these types of changes.

This government's approach of imposing sweeping changes without consultation with stakeholders has been severely criticized by the International Labour Organization and is considered to be an attack on freedom of association in different contexts.

The amendments to the PSLRA contained in Bill C-4 will result in collective bargaining that is in fact devoid of any fair and independent dispute resolution mechanism in the event of impasse at the bargaining table. That, in our view, is a violation of the right to collective bargaining that is protected by paragraph 2(d) of the charter.

Bill C-4 proposes to make conciliation/strike the default process to resolve disputes, while at the same time it grants the employer exclusive and unfettered power to determine which positions are to be designated essential.

Should the parties to collective bargaining eventually find themselves before an arbitration board—or even a conciliation board, for that matter—Bill C-4 proposes restrictions that give the employer considerable leverage throughout that dispute resolution process as well. The process will become less fair and more politicized.

These changes dilute the value of objective analysis of relevant economic factors and replace factual evidence with ideological preference.

Put differently, Bill C-4 completely stacks the deck in favour of the employer. It corrals unions to the conciliation/strike route while keeping exclusive and unchecked control over how many workers actually get to go on strike in the hands of the employer and the employer alone. The bill goes further by ensuring that arbitration or conciliation boards have their hands tied by the government of the day's desire to pay—not the ability, which is the proper standard.

The proposed system forces confrontation and results in a serious impairment of the freedom of association protected by the charter. Beyond these associational rights of public servants, the bill also attacks individual rights of our members.

Bill C-4 calls for the PSLRB, the Public Service Labour Relations Board, and the Public Service Staffing Tribunal to be consolidated to form a new entity, the Public Service Labour Relations and Employment Board.

While the purpose of these types of exercises is usually to find efficiencies, this legislation is actually going to have the opposite effect. There are currently long delays, both at the PSLRB and the PSST, and it is not apparent how merging these two entities will shorten those delays.

In fact, compounding these problems, this legislation will probably increase the volume of complaints by forcing similar individual grievances to be filed separately instead of using the policy grievance tool, which was a tool that was developed under the 2005 Public Service Modernization Act and had resulted, in our view, in a lot of efficiencies by handling a number of individual matters in one policy grievance.

● (1250)

[*Translation*]

The proposed legislation strips the Canadian Human Rights Tribunal—

[*English*]

The Chair: You have one minute remaining.

Ms. Isabelle Roy: Okay.

[*Translation*]

The bill strips the tribunal of any jurisdiction in relation to allegations of violations of the Canadian Human Rights Act in the workplace for federal public service workers, granting exclusive jurisdiction to the new board. Under the present federal human rights scheme, a finding of discrimination against an employee may attract a direction that the employer cease the discriminatory practice and take measures, in consultation with the Canadian Human Rights Commission, to redress the practice. This power is not provided to the PSLREB in Bill C-4.

[*English*]

The proposed legislation will extend the discretion to dismiss grievances on the basis that they are considered trivial, frivolous, vexatious, or made in bad faith to the employer. Traditionally this was a power granted to independent bodies, like the CHRT or the PSLRB. It's unprecedented to give the employer this ability to unilaterally dismiss grievances before they're even heard. Don't be surprised if there's an increase in the number of grievances that end up in front of this new board for that very reason.

In conclusion, Bill C-4 erodes the associational rights of public servants to fair collective bargaining and their individual rights to prompt, efficient, and unbiased dispute resolution.

Division 17 constitutes an unjustified violation of the freedom of association guaranteed by the charter and is unconstitutional.

Divisions 17 and 18 should be separated from Bill C-4 to allow for proper consultations with stakeholders so that a true modernization of labour relations in the federal public service can take place, as opposed to proceeding with this regressive proposed legislation.

Thank you.

The Chair: Thank you for your presentation.

We'll now go to Mr. Neilson, please, for your five-minute presentation.

● (1255)

Mr. Gareth Neilson: Thank you, Mr. Chairman.

After reviewing Bill C-4 we were pleased to see some necessary changes made to labour relations and arbitration systems. We believe it's the right direction for the Canadian government to take at this time. Having said that, today we'd like to comment on income inequality, fairness in pensions, and keeping our seniors out of poverty, as we feel that these are issues the government needs to look at a little more carefully.

When we do talk about public sector compensation, it seems fashionable today to compare their compensation with the top 1% in our society. That is a completely false comparison. The richest in our society are rarely concerned about what the average public sector worker makes. Similarly, it wouldn't be fair to judge what a public sector worker makes by the poorest in our society, because it would be a complete imbalance.

What we are suggesting is that the committee focus on the average working Canadian when analyzing what compensation is equitable for a public sector worker. Since 2003 we've seen a significant increase in public sector compensation. According to the PBO, the average civil service employee now makes in excess of $77,000 per year. What makes that both alarming and unfair, in our opinion, is that the average private sector worker in the country today is making just in excess of $40,000. In other words, the private sector worker is making about 48% less than the public sector worker. I think in the previous panel one of your witnesses testified to that. He realized that the pay was so much spread apart between the public and private sectors.

At a time when inflationary trends are causing financial challenges for the average private sector worker, we do think it's very important for the government to fix this fiscal imbalance. I think there are some measures in this bill that certainly could do that.

The effect of rising salaries in the public sector has also had a very negative effect on pension programs. For every dollar that you give a civil servant in salary, the pension fund has to find $16 for that worker in retirement. When our pension system was created, the expectation was that an employee worked for about 30 years, would be retired for a few years, and then pass away. However, today our life expectancy is so much higher. A recent actuarial report that we have seen showed that the average life expectancy for a female public sector worker was 89.4 years and for a male it was 87.3.

Now, of course, we find ourselves two years into the baby boom retirement tsunami, and many of the pension plans are broken. It seems that the only answer to that has been to increase the contribution rates. That's not going to work. Over the last 10 years, in fact, we've seen contribution rates increase by over 130% into these pension funds, and now it is a fact that Canadians invest as much into public sector pension funds as they do into their own RRSPs. Again, this is unfair to the average private sector worker. As they struggle to pay the bills and have nothing left to contribute to their own pension fund, they have to match the contributions dollar for dollar of the public sector worker. According to the PBO, when you include pension matching and when you include some of the benefits, the average civil servant is costing taxpayers $114,000 per year. In fact, last year Canadians contributed over $34 billion into public sector pensions.

At Fair Pensions for All we believe that every Canadian should be able to save for retirement, not just the wealthy and not just those who are in government.

There's also been a lot of talk about the big CPP recently. We reject that out of hand. We ask you to do the same, because we see that as basically a backdoor bailout of public sector pensions and we would suggest you ignore that.

The Chair: One minute.

Mr. Gareth Neilson: Finally, I want to make a couple of suggestions, if I could, Mr. Chair.

We suggest that the government look at ending defined benefit pensions for government employees and replace them with defined contribution plans. We would suggest that those plans would be matched by the employer up to $3,000 per year, as that would more accurately reflect what a private sector worker can get. We also suggest that the government take the CPP, OAS, GIS, and QPP and make one simple-to-understand pension program. In doing that—and this is the last comment I'll make, Mr. Chair—we would suggest it use income testing to decide who actually needs this retirement income. If we do income testing with these particular government retirement programs, we can actually help the people who really need it. Our work shows we could increase the average retirement income to $25,000 per year without having to increase contributions.

With that, I thank the committee and look forward to any questions you might have. Thank you.

● (1300)

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

We'll go to Mr. Murray, please, in Edmonton.

Mr. Robert Murray: Thank you, Mr. Chair.

We at the Frontier Centre are proud to have been invited to speak today because we feel that Bill C-4 represents a series of essential changes and clarifications to a variety of aspects of Canadian government.

As requested, my comments here will be limited to part 3, divisions 17 and 18, which seek to modernize the collective bargaining and recourse systems available.

Popular interpretation and criticisms of divisions 17 and 18 seem to focus on an effort by the government to limit or eliminate labour rights, particularly from unionized workers, in an omnibus bill. For the most part, I would say the provisions of divisions 17 and 18 are aimed to create efficiencies in the labour processes, particularly in recourse mechanisms, and will in some cases reduce unnecessary duplication or confusion.

Clearly, the most controversial aspect of these sections is that which focuses on the ever dubious essential service designation. We at the Frontier Centre believe the time has come for a public debate about the right to strike in the public sector, and we welcome the opportunity to comment, though at the outset I would also urge caution with any expansion of the essential service designation.

There is no doubt that the essential service designation is important and could be more widely applied in the federal government, but there is a risk in overutilizing the concept. First, the clear expansion of government power in this area as a result of Bill C-4 is in some ways problematic and really needs to be thought through further. Also, if overused, unproductive negotiations could continue for unusually long periods of time, unless parties agree to a final-offer selection of binding arbitration at the outset.

While we do support the arbitration process and believe that unions have historically done well under the process, I would stress that it is a key right of the employer to designate a service as essential, though any expansion of the designation or a reduction in the ability of unionized workers to strike or to access labour rights will clearly face significant opposition. As such, a long-term, honest consultation process should be embarked upon, which I believe this committee is trying to get at, but I hesitate to say will not go far enough in that consultation process.

Curtailing or limiting the right to strike or access to grievance arbitration will never be appealing to unionized workers as it is a vital last-resort option in times of difficult labour processes. I do believe the use of strikes has become far too overutilized. It is now seen as a tactic rather than a last-resort option. As such, we would support efforts to further limit the ability of a party to strike in some cases. As such, we would also urge that there would have to be curtailment of the ability to walk out simultaneously.

In any public sector work stoppage, it is not the government that is hurt, it is the taxpayers. Canadians pay a very high premium for what are supposed to be world-class public services and should not have to face close-downs because of labour instability. We see little need for taxpayers to pay for services they have no access to, and it's time for these issues to be tackled.

Further, it is very much in the public's interest to have certain services declared as essential, but the government must prepare for the myriad of court challenges that will come as a result of expanding the designation. Ultimately, if this bill is to move forward, the success of a court challenge would, at least in part, be dependent upon how much consultation has actually taken place and how impartial that consultation process truly is.

Other aspects of divisions 17 and 18, such as the expanded use of conciliation, the extension of bargaining timelines, streamlining recourse and grievance processes, and the consolidation of matters into one board are all very useful in their own right in some cases, though each must be considered and valued on its own merit.

Ultimately, what we see the government is trying to do in divisions 17 and 18 is very positive, though we have questions regarding why this is being embedded in an omnibus budget bill. The status quo is not working well for any party involved in negotiations at this point in time, and it's certainly a time for alterations in the ability of public sector employees to strike and their access to certain labour recourse mechanisms to be reviewed, so as to not hold taxpayers hostage.

Even so, legitimate, fair, and transparent practices are by far the best ways to achieve labour peace. We would hope that these underlying values are being contemplated—

The Chair: One minute.

Mr. Robert Murray: —when all political parties make their decisions on these matters.

Thank you.

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

We'll now go to Mr. Pruden in Windsor, please.

Mr. Pruden, can you hear me?

Mr. Robert Pruden: Yes, I can. Thank you very much, Mr. Chairman.

I'd like to begin by thanking the committee for the invitation to participate in these consultations.

I am an individual who has worked for over 30 years in the labour relations field in the private sector and the public sector. For 20 of those years, I was the chief negotiator for the Government of Manitoba, for both the government as an employer and for a number of crown corporations and government agencies, so I have considerable experience with interest arbitration.

To be honest, I'm not a big fan of it. I find it interesting that there seems to be a lot of concern about the impact of this bill on collective bargaining, that there will be no meaningful bargaining. I think in an interest arbitration environment, it's pretty well documented that interest arbitration has a chilling effect on bargaining. That's the term that's used, and it's based on the tendency of arbitrators to split the difference between the parties' positions. I have found, and I think it's been well researched by others, that bargaining in an interest arbitration environment largely involves excessive demands, minimal compromise, and an attempt to have an arbitrator split the difference. There are some real problems associated with the impact of interest arbitration on collective bargaining.

In addition, there is a narcotic effect that has also been researched that talks about the tendency for parties who basically delegate their problems to an interest arbitrator to become addicted, for want of a better term, to that mechanism, so it can have a detrimental effect on the relationship between the parties.

When I look at the role of government, it seems to me that two things in particular are important. One is to protect the safety and security of the public, and the second is to be responsible with regard to the use of government funds. I don't believe government should negotiate the safety and security of the public, and I think the danger with that—and that's part of the existing process where there's a negotiation process—is that bargaining by its very nature has compromise. What that means is essentially the government and the unions are in a position where they are compromising the safety and security of one group of the public to the benefit of another. So compromise is not an appropriate mechanism when you're dealing with safety and security issues.

I don't really even believe that those issues should be delegated, for want of a better term, to a third party. A third party should not be imposing a compromise on safety and security issues. These are key issues; they are fundamental issues. I think that whether or not those issues are essential services and are subject to negotiation or third-party review, they are fraught with difficulty for the public.

With regard to the grievance arbitration process, or adjudication process, there's been some comment about that. I venture to say that if you started with a clean sheet of paper, you would not set up the existing system in the federal system to handle grievances. When I look at the ideal grievance procedure for individuals, it should be an efficient process to achieve final resolution of disputes. I think the changes that are being proposed will certainly increase efficiency, and they will better enable the parties to achieve a final resolution by avoiding some of the jurisdictional issues that have been problematic in the grievance arbitration process at the federal level.

● (1305)

The Chair: One minute, please.

Mr. Robert Pruden: The point I would make on that is that the existing process is a very imperfect process, and these changes on the grievance arbitration process, in particular, I see as quite positive. I don't see any discrepancy between what's being proposed for the public sector here and the private sector. It starts to mirror the private sector more closely, and I think this is a more important goal.

The Chair: Thank you very much, Mr. Pruden, for your presentation.

We'll begin members' questions with Ms. Nash for five minutes.

Ms. Peggy Nash: Thank you.

Welcome to all the witnesses.

I was struck during the presentation by the witnesses today.

Ms. Blais, you called the process around Bill C-4 an assault on due process. We've had several witnesses, whatever their view is on the specifics of this bill, who have expressed genuine concern about the process of omnibus bills. This is the fourth omnibus budget bill that we're dealing with. But I've also heard concern about lack of due process when it comes to lack of consultation.

I'll ask my question to the three of you here in the room with us—Ms. Roy, Ms. Blais, and Mr. Barrett. Is this because labour relations right now are at such a critical point that the government has no time for due process? Is this a house on fire? Are we so inundated with federal jurisdiction strikes and rampantly escalating pay raises and workplaces run amok that the government has no choice but to come in wielding a pickaxe, which is a short form for omnibus budget bills? Is there any rationale that you can see for the government embarking on this process?

● (1310)

Mr. Steven Barrett: No, none whatsoever. In fact, as I said, it defies the non-partisan tradition, particularly for the federal government, of consulting meaningfully before changes are brought in and seeking expert advice. For example, I'm not aware of the essential service designation having caused any loss of delivery of essential services or any real risk to safety or security.

Ironically, for a Conservative government in fact forcing workers to the more militant strike/adversarial approach seems odd.

Ms. Peggy Nash: Do you think that will be the outcome, that it will in fact provoke more labour unrest?

Mr. Steven Barrett: That's right, and it will force unions like the lawyers—my former client, actually—to engage in strike action. They have no interest in engaging in strike action. They view it as inconsistent with their professional obligations. Of course, if the government ends up designating most of them as essential, they're going to lose access to any truly independent arbitration mechanism.

In answer to your question, is there some crisis in federal public sector labour relations, of course not. As I noted I think in my opening remarks, we just had the parliamentary review called for under this new legislation, which has only been in effect since 2003. The government participated in the review, as well as the unions, other stakeholders, experts. The government didn't ask for these changes in 2011. Nothing has changed since then. The review recommended none of these changes. It's hard to ascribe a motive of making good public policy to the government.

Ms. Peggy Nash: I just have a quick follow-up question before I get to the other witnesses. How long have you been practising labour law?

Mr. Steven Barrett: Too long, since 1985.

Ms. Peggy Nash: So for almost 30 years you've been working in this field. You would tend to know what you're talking about. You would tend to have some experience.

Mr. Steven Barrett: Yes.

Ms. Peggy Nash: Ms. Blais.

Ms. Lisa Blais: We see this as a solution looking for a problem. We're not unreasonable. We understand that changes, ameliorations, can be made to all legislation, and that's what the law reform commission—and the law commission after it—was set up to do. It was an independent, arm's-length body that looked at laws and said, okay, what's working, what's not working, and it would provide expertise and recommendations. These things wouldn't be done in secret without consultation with experts.

Talking about essential services, if I could, I refer you to—

Ms. Peggy Nash: I would like to get to Ms. Roy as well.

Ms. Lisa Blais: Okay. I simply refer you to the chart in our written submission where we talk about essential services, and everywhere except for one exception is there a right to negotiate who is essential and who is not.

I urge you to look at that when you have a moment.

The Chair: Thirty seconds.

Ms. Peggy Nash: Ms. Roy, you're actually in the workplace. What's happening there?

Ms. Isabelle Roy: I am an employee of the institute, so I help represent these 55,000 members. Historically, this has not been a workplace that has gone on rampant strikes. There is not labour unrest in the federal public service. There's no urgency calling for this piece of legislation. Wages are not out of control. In fact, we've just come out from under the Expenditure Restraint Act in the 2009 omnibus bill. The PBO has recently declared that the wage increase in the public sector is just about the rate of inflation. We're not running away with pockets full of money at the bargaining table.

The Chair: Thank you.

Thank you, Ms. Nash.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Chair.

Thank you all for attending this session. There are so many great people here at the panel.

I'm going to direct my attention to the folks from Fair Pensions for All. The question was raised, is there a crisis? In the last panel I suggested that much, if not all of this, is the direct result of something that absolutely must be done. We're not going to talk about the discrepancies between wages at this point.

You folks have been working with pensions for a long time. I've followed you. I've read a lot of your material. I want you to tell us, is there a crisis in the pension? And how critical is it to address the defined pension plan shortfall in this country? I want you specifically to talk about public sector pension plans. Maybe talk about some of them, not only at the federal level but at the provincial and municipal levels. Then I want you to tell us if you have a solution.

I've read your briefing on CRISP, the proposed Canadian retirement income savings plan, and maybe you'll have some time to talk about that. So go for it.

● (1315)

Mr. Gareth Neilson: Is there a crisis? Yes. We have gone through and looked at pension plan after pension plan. They all have unfunded liabilities that are growing and growing.

To give you a specific example, the most recent one we just dealt with was the OMERS plan, which is the municipal plan in Ontario. We were invited to a conference in which they were asked whether or not they could just wind up the plan. Everybody who is in the plan gets their pension, but there's no more, no less. That's what they get.

The actuary said unfortunately they couldn't do that. If they did that, they would be $40 billion short. That's a remarkable number because you're talking about just paying people what has been promised today, not what has been promised tomorrow, not paying them the lump sum today, but over the lifetime paying for their commitments. Without more money coming into the system, they don't have enough money to pay for what they have promised already today, which is scary. They need to have more money to pay for the obligations they have already made.

So what happens tomorrow, when they have to make up for those obligations as well? Who pays for that? That would be the first issue.

Increasing contribution rates is one of the main things that seems to happen. When you increase the contribution rates, the private sector taxpayer has to match that. When they do that, it essentially takes more of your budget and puts it towards pension contributions.

We're seeing this at all three levels of government, where pension contribution amounts are growing, and it leaves an infrastructure shortfall. That would be another very real situation for the government to have to deal with as these contribution rates keep going up.

Now we did mention a solution. Our solution essentially calls for ending defined benefit pensions, bringing in a defined contribution plan, increasing the average or the minimum amount you can get in retirement. Right now it's about $18,000 and change. We want to move it up to $25,000.

We think we can put in income testing. So if you have a defined benefit pension in excess of the average working wage of the country, you don't get what amounts to today's CPP and OAS. That money would be put back into the system so that the poorest in our society, those people who are on the poverty line right now—the mother who has spent her whole life raising her children and doesn't have much to go on—would see an increase in their pension amount.

I think that is really what we need to do. Let's take it from some of the people who have a great pension now, and let's divert that money to the people who really need it.

Mr. Dave Van Kesteren: I have a final question, and I need to know this. I think committee members all need to know this too.

Is the current pension system we have in the public sector sustainable?

Mr. Gareth Neilson: It would be highly unlikely. Certainly it isn't the way the system is set up now. If there are systemic changes that are made, then yes, go down a different path. If you wanted to keep a defined benefit program by putting caps so that pensions could only go to a certain level, then you probably could make them sustainable.

But in terms of what's going on now, the answer is no, because the current system says I'm going to put in 10¢ a year for 35 years and I'm going to take out 70¢ a year for 35 years. There is absolutely no calculator I have ever found that shows that math works.

The Vice-Chair (Ms. Peggy Nash): Thank you, Mr. Van Kesteren.

Mr. Cuzner.

Mr. Rodger Cuzner: Thank you very much, Madam Chair. I see your chairman has moved on. He has seen that picture of Mr. Murray in Edmonton and the picture of the north Saskatchewan fishing fleet up behind him and he had to go cool himself down.

I have a couple of things. Mr. Murray, if you could, you have referred to an increase in the amount of strike action here in Canada. Could you expand on that? What research are you referencing there?

● (1320)

Mr. Robert Murray: I don't believe I referenced an increase in strike action in Canada. I think my comment was about what we see with regard to the application of the essential service designation and the impact that could have on people's options and evaluations, as to whether or not they are going to strike and whether the government, through this bill, is pushing them into those more militant strategies. Statistically, no reference was made to an increase in the use of strikes in Canada at this point.

Mr. Rodger Cuzner: Yes, I misinterpreted that.

Ms. Roy, you had a line that stayed with me: the dismissal of grievances before they were heard. I find it strange.

We have heard some excellent testimony from this group, but if you had really knocked one out of the park on a particular issue...the deadline for amendments was this morning at 9 o'clock. It's too late to close the door after the cows have left the pasture.

What strikes me about both sessions of today's testimony—and when we fall into the trap of changing laws when we cite a particularly egregious case.... The Canadian Taxpayers Federation was here today and they identified one particular case and this is why we have to change the rules. But the evidence you shared with us today...the harmony and the progress we've seen over the years has been a result of consultation, consensus. Employers, crown corporations, FETCO—everybody is buying into the process.

Do you see the departure being driven by, for example, the testimony that was given today by the Taxpayers Federation? He's not an expert; he doesn't seem to have any background in labour relations or anything. This is a hijacking of the process, but the outcome further impairs relationships going forward, not just now.

Would anybody like to comment on that?

Ms. Lisa Blais: We rush to change for the sake of change. It creates bad law and bad law creates bad situations. I think now more than ever we need to take a step back and really think about what we're doing and why we're doing it, because these changes will impact labour relations for years to come.

Make no mistake, 17 contracts are up in 2014 and they will all be impacted if this legislation goes through as is.

Mr. Rodger Cuzner: That's an inordinately large number of contracts.

Ms. Lisa Blais: Exactly, and it's a concern, because we will have to live with those outcomes for years to come. So I take your point very seriously.

Ms. Isabelle Roy: It's interesting that this discussion around poor performers and pension issues, which I assume was the issue raised by the Taxpayers Federation—I didn't hear all of it. This legislation doesn't address any of that. Pensions are not subject to collective bargaining, for one. They are excluded by the Public Service Labour Relations Act, and this legislation does not change that.

Performance issues are in no way addressed by this legislation. There is already very limited recourse for members who are subject to discipline, demotion, or termination on the basis of bad performance. That's not been improved; there's no loophole for these people. If management is finding bad performance and addressing it, unions are concerned with ensuring that it's fair, but this piece of legislation before you right now doesn't change anything in that regard, and it doesn't address that. No economic argument is to be made by any of these changes that are being put forward, certainly not in that area.

Mr. Rodger Cuzner: Thank you.

The Vice-Chair (Ms. Peggy Nash): Thank you very much.

Mr. Saxton.

Mr. Andrew Saxton: Thank you, Chair, and thanks to our witnesses for being here today.

Mr. Pruden, you've seen the collective bargaining process first-hand, both in the private and public sector, so I think you're qualified to comment on how this process can sometimes be very inefficient and time consuming. Measures in Bill C-4 streamline the collective bargaining process. For example, negotiations will now start exactly one year before the expiry of the current agreement and arbitration boards and public interest commissions will now be able to take into account an employee's overall benefit package when determining fair compensation.

Do you agree with changes like these that not only streamline the process but also bring them into line with the private sector and provincial government practices?

● (1325)

Mr. Robert Pruden: The first thing would be the idea of starting bargaining a year before the expiry. I'm not sure why that's being done. I don't necessarily regard that as an improvement. My guess would be that not a lot of serious bargaining would take place in the first six months of that. Bargaining tends to heat up as you get closer to the expiry date. I'm not a fan of that one, I would have to say.

The second point is absolutely critical. What you're referring to there is the concept of what's called total compensation, so that you don't simply compare the wages in the bargaining unit to the private sector or to other types of jobs; you compare the pay, the benefits, the pension, the total compensation package. That's something that is really lacking from the point of view of interest arbitration cases, where arbitrators focus on issue by issue and they don't look at it in totality. Quite frankly, in the private sector, if we give somebody a dollar on benefits or a dollar on wages, it's still a dollar. We have to find a way to generate that dollar. Depending on the business we're in, it could mean we have to generate another $2 or $3 in revenue to provide that dollar. The line between a dollar on wages and a dollar on benefits or on pension is an artificial line, so I really believe in the total compensation model.

Prior to our panel, there was an individual who talked about the heavy-duty mechanic with PSAC in Moose Jaw versus the private sector equivalent. She noted that the PSAC heavy-duty mechanic was paid less than the private sector mechanic down the road. As a matter of fact, if you look at total compensation, my guess is the PSAC person is doing far better than the private sector person. That's one of the reasons there's no recruitment/retention problem in the private sector. So I'm a big fan of those changes for that reason.

Mr. Andrew Saxton: Thank you.

I'm interested in getting your thoughts on the amalgamation of the Public Service Labour Relations Board and the Public Service Staffing Tribunal into the new Public Service Labour Relations and Employment Board. This measure eliminates duplication, reduces costs, and essentially creates an efficient process of one grievance, one review.

Do you agree that this measure goes a long way in making the complaints and grievance processes more efficient for the public service?

Mr. Robert Pruden: I absolutely agree with that. If you look at the grievance process, the more restrictions, the more avenues or choices of forums that you provide to individuals, the worse the process is. You wind up with a lot of grievances, and there could be a question as to whether it should go one route or another, whether it's a discrimination or a selection grievance or a grievance under the collective agreement. What you get is what you call “forum shopping”, where people will decide to go to one forum rather than another. Then you wind up with jurisdictional issues where you have lawyers on both sides arguing that, no, it shouldn't be in front of this tribunal but it should be in front of another tribunal. Creating a seamless adjudication process, whatever that is, is much more consistent with the private sector, but it's also far better management. I believe ultimately it's better for both parties.

Mr. Andrew Saxton: Chair, do I have a minute?

The Chair: You have thirty seconds.

Mr. Andrew Saxton: Very quickly, my last question is, do you have any comments on division 17, specifically how full disclosure around arbitration decisions will promote fairness and how, considering all elements of compensation, it is a fiscally responsible decision?

Mr. Robert Pruden: Absolutely.

One of the things the parties can do with an arbitration decision is they can learn from the way arbitrators have interpreted the legislation, the way they've applied their thought processes to issues, whether it be total compensation or some other issue. I actually can't imagine an interest arbitration process without full reasons being provided.

● (1330)

Mr. Andrew Saxton: Thank you.

The Chair: Thank you, Mr. Saxton.

[*Translation*]

Mr. Caron, the floor is yours.

Mr. Guy Caron: Thank you, Mr. Chair.

I want to thank all the witnesses for their presentations.

I will start with you, Ms. Blais. I asked someone this question this morning, and now I'm asking you. There's a similar case in Saskatchewan. The Saskatchewan Federation of Labour is challenging provisions set out by the Government of Saskatchewan. The Supreme Court will be hearing the case. And yet the government has decided to introduce similar provisions without knowing whether or not they are constitutional or what the Supreme Court will rule. We can expend a lot of energy debating the matter and creating tension within the public service, but we don't even know whether these provisions can be enforced.

I'd like to hear your thoughts on what I would call the irresponsible nature of the government's actions in this matter.

Ms. Lisa Blais: If you don't mind, I'm going to respond in English as I'm more comfortable in that language.

Mr. Guy Caron: Fine.

[*English*]

Ms. Lisa Blais: Your point is well taken and it goes back to due process. Again, the rush is inexplicable. We will have these precise issues discussed at the Supreme Court of Canada. Leave was granted, and they will be discussed at great length. To us, as lawyers and as rational people with common sense, rushing these changes in when very similar changes will be considered in due course defies common sense.

[*Translation*]

Mr. Guy Caron: A number of legal experts have said these provisions could violate the Canadian Charter of Rights and Freedoms, specifically sections 2(*b*) and 2(*d*). I believe Ms. Roy made that point earlier.

In your expert opinion, do you think serious doubts about the constitutionality of these provisions are legitimate?

[*English*]

Ms. Lisa Blais: Our concern is that these changes don't pass the smell test when it comes to meaningful consultations. The Supreme Court of Canada has upheld meaningful consultations as a concept in labour relations. How can you have an arbitrator whose hands are tied as to what he or she can consider? How could that be meaningful consultation? How can you force individuals to strike when a significant percentage of their members cannot participate in that strike? How is all of that meaningful?

The government holds all the keys to the legislative closet. They hold all those cards, to use that analogy. The whole point of having a choice and giving that choice to the unions in terms of what route they choose was to recognize that unions are stacked when they're dealing with the government. We're not dealing with Coca-Cola. Coca-Cola can't draft legislation and say, “Go back to work”, or, “Here's wage restraint”. This government has used those tools, and our hands are tied.

[*Translation*]

Mr. Guy Caron: My next question is for Mr. Barrett.

I think this can be viewed as a political change. As I understand the bill, it would allow the government to trigger a labour dispute if the government deemed it politically or economically viable.

Is there any way to counter such an abuse of power, such strong-arming by the government?

[*English*]

Mr. Steven Barrett: I just want to follow up on some of the earlier comments in terms of the constitutionality, which affects your question, I think. The real abuse, as the Supreme Court of Canada has said, is that the Charter of Rights gives as least as much protection to Canadians as is afforded under international law protections of freedom of association, and under international law the right to strike is protected. That's an issue before the Supreme Court of Canada.

We also know two things from what the international law committee on freedom of association of the ILO has said on two critical aspects of this legislation. One of them I tried to bring to the committee's attention in my brief on page 7, and that is in relation to a case that went to the ILO out of Newfoundland, in which the legislation provided that if 50% were designated essential, there was a right to go to arbitration. The ILO ruled in that case that even at 50% that deprived workers of a meaningful right to bargain.

Second, a recent decision arose out of legislation the current government passed here in Ottawa, the Protecting Air Service Act. That legislation provided that the arbitrator had to be guided by certain one-sided criteria. It wasn't actually as clear as this legislation, which says you have to give predominant weight to the government's stated fiscal priorities and budgetary priorities. In that case just released this year, in September, I believe, the freedom of association committee said that you can't undermine the independence of arbitrators. If you take away people's right to strike, you have to give them an independent process.

Lastly, in 1987 Chief Justice Dickson, who was one of the judges back then who found the right to strike to be protected, specifically said in his decision—and I think this will be very influential for the Supreme Court of Canada—that where you provide that an arbitrator is bound to give greater weight to one factor than another, a factor that favours the employer, that cannot be justified as a reasonable restriction under the charter.

● (1335)

The Chair: Okay. Thank you.

We're going to Mr. Keddy now, please.

Mr. Gerald Keddy: Thank you, Mr. Chairman. I'll be sharing my time with Mr. Jean.

I welcome our witnesses.

Part of our discussion here that I keep coming back to, as I mentioned in my last questions, is the responsibility of legislators or governments to find balance, and I think it's the responsibility of unions as well to participate in that balance. It's sometimes difficult to do.

On this question, I want to go to Mr. Murray at the Frontier Centre for Public Policy. One of the statements made by one of the witnesses was that during the height of the economic downturn, we lost 400,000 or 500,000 jobs in a relatively short period of time, and yet the size of the civil service increased.

I think we're seeing that straight across the country, in that for every attempt to modernize and restructure the dispute resolution process to make it more cost-effective, quicker, and more in line with other jurisdictions, and every time anyone asks for change, there's always someone who says we shouldn't make that change.

What are other jurisdictions in Canada doing?

Mr. Robert Murray: I know that the most recent experience we've been doing research in is actually that of the Ontario public sector, particularly pertaining to its education sector, primarily because of the fact that you now have a system where in the last couple of years it has become intrinsically broken, based on some of the unclear relationships.

Just returning to some of the previous testimony, if I may, I would argue that the time is now, that there is a crisis we are currently experiencing, so this type of discussion and debate is necessary. But where I would question it is in the way it's being done. If it is this important and expedient for budgetary purposes, political purposes, and labour purposes, etc., it would likely deserve its own consultation process and its own bill, in order for us to be able to more comprehensively examine some of these issues.

But to return to the question, if I could, in looking at some of the provincial jurisdictions pertaining to their education bargaining, what we've seen more recently is that government is notoriously bad when it's in the business of bargaining. In some of the discussions regarding public/private, Frontier has been fairly clear that one of the solutions that could be explored would be to privatize some of these crown corporations.

Canada Post is an interesting example, in that maintaining the right to strike in the private sector is one thing, as long as there is competition that is breeding and going alongside of it. Really, the size of government, the breadth of government, and government being in the business of bargaining in the first place have really complicated and in some cases convoluted matters.

The Chair: You have about two and a half minutes, Mr. Jean.

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

I have to say that I was a lawyer as well. I still am, I guess, as I'm told by the law society.

I notice that you were called to the bar in 1997. I was called in 1993, but I've been doing this for 10 years. Up until 2004, when I was elected, I had never seen anybody throw money that doesn't belong to them at others—like judges. What I mean is, in support cases, or when there's a determination of civil issues, judges, I found, would very easily throw money that didn't belong to them—money that belonged to the other party—at the aggrieved party. I will say that since that time I have changed my mind, because I've never seen anybody try to solve problems with money more than governments do.

I agree with the last speaker in what he said, which is that when governments run into problems, they throw money at the issue because it's easier than to deal with the bad press. It's a tough choice for a government to take the public service and say, listen, we have an issue, so let's take it back and let's look at the issue.

I see you agreeing with me, Ms. Blais.

What I'm getting at on this is that I'm one of those few people who actually thinks that crown prosecutors are not paid enough. In fact, in Fort McMurray, in my first year at the bar, I made double the money of the other crown prosecutors who had 10 years at the bar. Stats told me that. I looked at it and said there was no way I was going to be a public prosecutor, because they make $85,000 a year in Fort McMurray and you can't even live for that there.

Would you agree that statistics don't tell untruths generally?

● (1340)

Ms. Lisa Blais: I think that when it comes to my membership we're notoriously underpaid and—

Mr. Brian Jean: But my question is about the stats. I mean—

Ms. Lisa Blais: The stats with our members? Yes.

Mr. Brian Jean: Exactly.

Ms. Lisa Blais: Yes.

Mr. Brian Jean: What do you say about the issue of only 100 firings out of 190,000 people? Do you not see that as—

Ms. Lisa Blais: I welcome that question, because if you look at our collective agreement, you'll see that we're the only union that has performance review embedded in our collective agreement. We can't run away from it.

Mr. Brian Jean: So you would encourage other public sector unions to have that within their employment contracts with their people?

Ms. Lisa Blais: I think they'd welcome it as well. And if it's not in their collective agreement, they're already subject to performance review. We wonder why those guidelines aren't being implemented. If you want to fire a crown prosecutor for bungling a case, you can do it. It's just a question of implementing what's already there. I think I not only speak for the AJC, but I speak for every unionized employee who says “bring it on”.

Mr. Brian Jean: Every unionized good employee who works hard.

Ms. Lisa Blais: And they do.

Mr. Brian Jean: Yes, I agree. But isn't that who you're speaking for? The people who are not working hard don't want this to come in. I've heard the saying “hide and seek for a grand a week”, and I've heard this in the public union. I was part of CUPE at one time, and they will lose themselves within a building to not be found. “Hide and seek for a grand a week”—that's what they call it.

Ms. Lisa Blais: I'm fascinated by this obsession about these faceless, nameless people, because the tools are in place, and if there were employees in my shop—because I was in private practice for seven years—and they were hiding and seeking and surfing on the Internet, they'd be gone. Managers in the public service have those tools.

Mr. Brian Jean: Why are there only about 100 out of 190,000? It seems—

The Chair: Thank you.

Ms. Lisa Blais: Why are we talking about performance management in the context of...[*Inaudible—Editor*]?

The Chair: Order.

Mr. Jean, we are over time. We will have time to come back if you want in another round.

Mr. Rankin.

Mr. Murray Rankin: Thank you, and welcome to all of our witnesses. I appreciate you being here.

I described you, Mr. Barrett, to my colleague Mr. Cuzner as the Wayne Gretzky of labour law, you'll be happy to know. And I mean that sincerely. I've admired your career for many years.

Your comments I think deserve a bit more amplification than the time you've had. You talked about the conflict inherent between the government as employer and legislator. Mr. Yussuff, before you came, made a comment on behalf of the CLC that it was like being an umpire and a player on the soccer field, to mix metaphors, I guess. Presumably that's why consultation is so vital when the government holds all the cards like this. The Supreme Court has made the point that consultation is essential.

You were the counsel, among others, in the Bill-29 case, where another right-wing government, where I live, was slapped down unceremoniously by the Supreme Court of Canada. Do you think this bill is subject to criticism of the same kind for lack of consultation in the amendments that are before us?

Mr. Steven Barrett: I think many witnesses who have appeared here seem to be of that view, including my friend from the Frontier Centre. That's one area where we actually agree. It's not that often necessarily that we agree, and I think when there's a concern being expressed by him and by me and by many others about the lack of consultation, you're exactly right. And it's not only consultation for the lack of consultation; it's consultation because the Supreme Court of Canada has actually said that before you run roughshod over workers' fundamental rights, you have to consult. It's consultation, because, as the Canadian Labour Congress emphasized this morning, it's particularly critical when—and I encounter this all the time because I do primarily bargaining in the public sector—government is always a player. Either they're a player because they fund, in the Ontario context, hospitals and school boards, so they have an acute interest in the outcome of collective bargaining, or, in the case of the Ontario or federal governments, they are the employer and therefore have a direct interest in the outcome of collective bargaining. In that context, I think the reason that historically every other government before this one has actually engaged in a meaningful degree of consultation before introducing these sorts of substantial changes is because they recognized that, and they've recognized the inappropriateness, given their inherent conflict of interest, of acting unilaterally without at least trying to build consensus, without at least getting input and involvement from the affected stakeholders.

There was a question earlier about other jurisdictions. One test of this is whether what the federal government is proposing here is consistent with the generally accepted approach across Canada, with Conservative governments, Liberal governments, the odd NDP government. Is it consistent with the approach that other governments take in collective bargaining with their own employees or employees in the broader public sector? The answer is an unequivocal no. It's outside of the bounds of what's considered fair and reasonable in at least two respects. One, when it comes to essential services, I've heard Minister Clement say that as a government, they need to worry about making sure they can have safety and security protected during a strike. No one disagrees with that. The fact is, though, that in every other jurisdiction that objective is met by allowing for some independent oversight, and not the government, which has a direct interest in who can strike, making that decision unilaterally.

Secondly, when it comes to arbitration, there is no other jurisdiction that requires an arbitrator in this context to give predominant weight to the government's unilaterally determined budgetary priorities and stacking the deck on the outcome.

● (1345)

Mr. Murray Rankin: Do I have time?

The Chair: Yes.

Mr. Murray Rankin: Oh, good.

I found that your written submissions were excellent. One of the comments you made was this:

> When taken as a whole, the changes to essential services, strike and arbitration provisions in Bill C-4 threaten to essentially eliminate the union's bargaining power by making the right to strike hollow and the right to arbitrate meaningless in the case of a labour impasse.

Those are very strong words.

Mr. Steven Barrett: They are strong words, but the government is proposing to do just that, and that's the problem with this bill.

Mr. Murray Rankin: Time will not allow me...and I may come back, if I can.

Ms. Blais, on behalf of the Department of Justice lawyers, I commend you for your presentation, and, frankly, for your courage in being here. I say courage because of course we're all aware of Edgar Schmidt, one of your members. He was found to be a whistle-blower, pointing out the government's failure to do adequate charter review of federal legislation, and then suspended from the Department of Justice for bringing that to the attention of the courts, despite the withering comments of the Federal Court justice. Your being here is itself a very courageous step. I appreciated your very strong remarks in light of that background.

One of the things you pointed out that I didn't think you elaborated enough on, and I want to give you that opportunity, is the costs issue. You pointed out that this is going to make things more expensive. You think the government would get that and take it seriously.

Could you elaborate on why, in your view, it's going to be more expensive?

Ms. Lisa Blais: My presentation highlighted three areas, particularly strikes. When members are forced to strike as their only bargaining tool, then services will not be provided to Canadians. We question how that can save taxpayers' money. We only have to look at the foreign service officers to see a very recent and tangible example of that.

The second example is the overcomplication of the grievance process. The AJC is a group that uses group policy grievances. A group policy grievance says that when we think something is being breached in the collective agreement we can file as an association, as opposed to bringing 2,700 individual grievances when we want retroactive remedies. Bill C-4 eliminates that, so you're going to have potentially—for our group anyway, and we're one of the smallest—2,700 individual grievances to get a remedy. How is that cost-effective?

Finally, on the chairperson being able to review an adjudicator's decision—by the way, nowhere else in any jurisdiction in this country is that allowable, and the reason is that it's not efficient. You have another layer of bureaucracy, and over and above the costs, which are real, you have questions of political interference, bias, and those issues. Mark my words, there's a cost implication of having an extra layer.

We've brought out three tangible examples of where costs are not saved with this legislation.

Thank you.

● (1350)

The Chair: Thank you.

Thank you very much, Mr. Rankin.

I'm going to take the next round, as the chair. I do want to get perhaps two perspectives on the essential services. I want to drill down on that.

I thank all of you for your presentations and briefs.

In your brief, Mr. Barrett, when you dealt with essential services, you said:

> ...it gives the Government the exclusive right to determine whether "any service, facility or activity of the Government of Canada is essential because it is or will be necessary for the safety or security of the public or a segment of the public", eliminating any recourse for unions to the PSLRB in the event of a dispute.

You have acknowledged that the definition of essential service is remaining, but it's obviously the essential service agreements that will be affected.

Then you go on to state, "The employer must give notice that it has – or has not – designated positions as essential at least three months before notice to bargain can be given, or within 60 days after certification." You correctly say that it affects essential services agreements.

If you look at the list of essential services examples—border safety security, correctional services, food inspection, accident safety investigations, marine safety, national security—it's a very reasonable list.

I would invite your perspective, because I think probably the three at the table will agree, and then perhaps Mr. Murray will comment.

I know you're going to disagree, but I want to get your view on the record—

Mr. Steven Barrett: I'm open to any suggestion you might make.

The Chair: Frankly, it seems to me that these are very reasonable steps with respect to essential service agreements.

Is your concern that the government is going to expand the list of what is an essential service way above and beyond border safety security and what's currently deemed an essential service?

Mr. Steven Barrett: I have not seen the list you're referring to. I heard the minister on the radio saying that he would decide after the fact what is and isn't. But if there's a list, great.

The point is that under the current regime and under the regimes in place in every province except for Saskatchewan, which is on its way to the Supreme Court of Canada, the short answer is, yes, people don't trust the employer to exercise an unfettered discretion to decide, in the case of the federal government, who's essential to safety and security.

There are other criteria in other legislation, but in every other jurisdiction save Saskatchewan, that isn't done unilaterally by the employer, by the government. The employer can make a proposal, the parties bargain, and ultimately it's an independent tribunal that oversees that. That's recognized as necessary to maintain the fairness of the system. It's particularly critical here, where the government has the power to designate up to 79.99% as essential and force a strike because there's no access to arbitration.

I think the concern is that these are words that are flexible in their meaning. That's why you have oversight in every other jurisdiction by a labour board. As I said earlier, I'm not aware of any evidence to suggest that the labour board has gotten it wrong—if anything, unions are critical that labour boards are too deferential to the employer.

Nonetheless, there is some review. The complaint, just so you're clear, is that the right to review that has been a predominant feature of this legislation, and that in fact allows the government to determine the level due to a 1982 Supreme Court of Canada decision —the taking away of review is what people are complaining about.

The Chair: Okay. I appreciate that.

Mr. Murray, can I get your perspective on that issue?

Mr. Robert Murray: Sure. Thank you, Mr. Chair.

Going back to one of your original questions, I really don't think there is an alteration in the meaning at all. I think really what we're dealing with is rather than any kind of empirical evidence that there will be fundamental overhauls to services that are declared as essential, it's more, first of all, a fear and a concern, coupled with the fact that the legislation is not entirely clear, as to why this is really being put in the way it is.

I would agree that a right to review is an essential component because of the fact that the essential service designation can't be overused. I think by potentially overusing that designation, which the government would have the right to do, that could pose problems down the road.

Ultimately, I also think we would have to have a discussion about this definition of safety and security. Right now that list that you read off is very much focused on physical safety and security, but I think as we have seen more recently with governments in economic crisis, both at the provincial level and also in some of the federal government's discussions...does economic security also play into this and those that would possibly be deemed as essential services? Exactly what are the limitations on safety and security?

I think the real concern is not necessarily in the spirit of what is being proposed but rather the ambiguity of some of the language in the bill.

● (1355)

The Chair: I would like to continue this, but unfortunately I am out of time.

[*Translation*]

Mr. Côté, you have five minutes.

Mr. Raymond Côté: Thank you very much, Mr. Chair.

I feel compelled to make a comment. A lawyer, I'm not, but I've had the privilege of sitting on the Standing Committee of Justice and Human Rights, like my colleague Brian Jean. And yet his comment on judges' frivolous attitude towards government restraint and accountability made me flinch, considering the government's handling of the whole Nigel Wright/Mike Duffy affair. Be that as it may, I'll come back to the issue at hand.

Ms. Roy, the first time the committee met to study Bill C-4, we heard from public servants. Some of the answers they gave me were especially troubling. When I asked Dennis Duggan whether any sectors or employee classes could be completely excluded from the definition of "essential services", he had this to say:

[*English*]

"Excluded, off the top of my head, no."

[*Translation*]

I then asked him what recourse a bargaining unit or union would have if the government improperly designated a class of employment as an essential service. I asked him whether the matter would have to be brought before the courts, and he answered,

[*English*]

"As I mentioned earlier, the initial process would involve a consultation period with the bargaining agent in question, but beyond that it would be judicial review."

[*Translation*]

I'd like to hear your views on this troubling shift towards judicial intervention.

Ms. Isabelle Roy: Indeed, I do find those comments rather troubling in some respects, one being the uncertainty that the essential service designation would create. My colleague Mr. Barrett referenced some comments Minister Clement made on the topic. Make no mistake, the essential service designation is a matter the Labour Relations Board could review, and it has. That stems from changes under the 2005 legislation. They aren't that old. There have been cases in which the Labour Relations Board reviewed the government's decision to determine whether a designated service was actually essential. In some cases, the government's arguments were not successful.

This bill is a vengeful response to the cases the government lost before the administrative tribunals. By cutting administrative tribunals completely out of the picture, the government has left unions only one recourse, judicial review. And since a court will conduct the judicial review, it will cost not only the union money, but also the government.

The bill sets out such a unilateral approach that it's worrisome for unions. Not only does the proposed legislation give the employer an exclusive right, but it also stipulates that nothing in the bill can limit that exclusive right. It's a dual safeguard. It will be the unions' responsibility to make their cases before the Federal Court to convince the court that the minister's decision was either wrong or unreasonable. With such general wording, it will be extremely tough to convince a court to intervene in any way.

Making a successful case before the Federal Court is a huge challenge, and just getting to that point will cost more time and money.

Mr. Raymond Côté: Ms. Blais, would you care to add anything?

Ms. Lisa Blais: No, I think Ms. Roy zeroed in on the problem quite nicely.

Mr. Raymond Côté: Would you like to respond to the chair's comments? Mr. Rajotte asked some questions, and I'm not sure whether you had the chance to answer fully.

Ms. Lisa Blais: If you mean in terms of the costs or procedures, I think my colleague hit the nail on the head as far as our problems with the bill go.

Mr. Raymond Côté: Mr. Barrett, do you have anything to add on the subject?

[*English*]

Mr. Steven Barrett: I just note again that my friend from the Frontier Centre and I agree about the need for review. I think this committee ought to seriously take that into account in its deliberations.

[*Translation*]

Mr. Raymond Côté: Thank you very much, Mr. Chair.

The Chair: Thank you all.

[*English*]

I want to thank all the witnesses, both here in Ottawa and from the three cities that joined us by video conference. Thank you very much for your input into this budget bill. We appreciate your presence and participation here today.

This meeting stands adjourned.