



House of Commons  
CANADA

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

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HUMA • NUMBER 050 • 1st SESSION • 39th PARLIAMENT

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EVIDENCE

**Thursday, February 1, 2007**

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**Chair**

**Mr. Dean Allison**

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

Thursday, February 1, 2007

• (1540)

[English]

**The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)):** Pursuant to the order of reference of Wednesday, October 25, 2006, Bill C-257, an act to amend the Canada Labour Code, I call the meeting to order.

I just want to say thanks to the witnesses for being here today, and I apologize for any challenges we had by changing the room. We may be missing a witness or two as a result of the room change, but we do need to get going so we can make sure we have enough time to answer questions.

We had a steering meeting, which we'll discuss a little more afterwards, but one of the suggestions that came out of the steering meeting earlier today was that we try to limit speeches to a couple of minutes and get to some questions. I know we're not going to be able to convince our witnesses to change their minds at all, so we want to get to our questions as quickly as possible.

Once again, you can have some preamble, but the witnesses are here, and we're here to ask them questions. Try to make the best use of that. This was a suggestion of the steering committee, so I will just pass it along.

What we'll do is start now with Mr. Stewart-Patterson.

We have seven minutes each. We will start round one with seven minutes for questions and answers; round two with five minutes; and, with any luck, round three, which will be a little bit shorter, with five minutes as well.

Welcome, Mr. Stewart-Patterson. We'll have your seven-minute opening, please. I will let you know when you have one minute left.

**Mr. David Stewart-Patterson (Executive Vice-President, Canadian Council of Chief Executives):** Mr. Chair, and members of the committee, thank you very much for the opportunity to appear today. I say that as more than the usual pleasantries because I know that before Christmas there was some doubt as to how long this committee was going to give consideration to this bill. I do, therefore, want to thank very sincerely both current and former members of the committee for recognizing that this is a bill that has some broad strategic implications and deserves a thorough examination.

I think other witnesses have addressed the issue of how a ban on replacement workers affects the bargaining process, and I know

you've heard a variety of evidence: does it make strikes longer or shorter, more frequent, less frequent, more violent, less violent?

With your permission, I'm going to take a step back from that debate and look at the impact of the bill on the Canadian economy as a whole. I will start with one basic proposition: that the essential impact of a legal ban on the use of replacement workers is to increase the bargaining power of unions in the affected sectors. I'm not making a statement about the philosophical issue of whether workers deserve more bargaining power or not. I'm simply stating that such legislation does give them more leverage at the bargaining table than they enjoy today. I think it's therefore reasonable to suggest that passing this bill will lead to greater financial gains for affected workers in future negotiations. If that wasn't the case, why would unions want the bill? Whether these gains are larger or smaller, the question then is, who pays the price?

Companies in federally regulated sectors have customers across the country. In some cases they serve households and individuals and in others they provide vital services to business. Some of them obviously do both. In all cases higher costs for labour will be passed on, either to customers in the form of higher prices or to investors through lower returns. To the extent higher costs for labour are passed on to consumers, the issue is whether government should be intervening to help union members in these industries get more money at the expense of all other Canadians.

As a matter of social justice, for instance, should all families pay more for a telephone because government has decided that workers in this particular sector deserve higher pay? Higher costs could also be passed on to business customers. In this case the issue is slightly different; it's whether government should be intervening to give an additional advantage to workers in one group of industries at the expense of workers and investors in another industry. Does it serve the national interest, for instance, if higher costs for railway transportation have to be borne by Canadian manufacturers or retailers?

You may wish to argue that the gains for workers advantaged by this bill would not lead to higher costs but rather would come entirely at the expense of profits, of returns to investors. Academic studies do show the direct link between replacement worker bans and business investment. I note in particular the 2004 study by John Budd and Yijiang Wang of the University of Minnesota that found that strike replacement bans in Canada led directly to reduced business investment. They noticed, I might add, an especially significant drop in investment in the construction sector where banning replacement workers had the same impact as an economic recession.

Such studies aside, it's stating the obvious to say that whatever the rate of return on any potential investment, if that rate of return drops, investors are less likely to dive in and commit their money. You may argue that the impact on rate of return on federally regulated sectors from this bill would be rather small. Well, perhaps it might, but we live in an era in which competition for investment worldwide is fierce.

Canada, I would suggest, is already at a disadvantage, on several fronts. Canada's tax policies impose one of the highest marginal effective rates on new business investment in the industrialized world. New security measures in the United States are making travel within North America more difficult, and that's making Canada a less attractive place for a growing business with international customers to set up shop. The rise in global demand for energy and other resources is good news for western Canada, but the resulting higher prices are hurting manufacturers, which are largely located in Ontario and Quebec. The rise in the value of the Canadian dollar in recent years—largely resource connected—has added to this pressure. And of course suppliers of goods and services alike are facing intense new competition as emerging powers such as China and India transform patterns of trade and investment worldwide. One result is that Canada's manufacturing sector has already lost hundreds of thousands of jobs as companies faced with all of this either go out of business, invest in new technologies that replace labour, or shift production offshore.

So far our economy as a whole has been able to absorb these shocks and keep overall unemployment low, but Canada faces a real challenge here—a challenge to figure out where we want to compete in the world, what kinds of work we want, and what standard of living associated with that work are Canadian workers today and our children going to enjoy in the decades ahead.

What I've pointed out here is that we're already in a situation that gives investors—whether they're Canadian investors or foreign investors doesn't make much difference—some powerful reasons not to invest in this country.

• (1545)

We also are engaged in a very important debate, I have to add, about how to address the issue of climate change. A lot of Canadians consider that very important, and quite rightly so. On this issue, parties on both sides of the House have indicated that the solution, in one way or another, is going to involve new regulations and other measures that could significantly raise the cost of doing business in this country, as well as the cost of living for Canadian families, I might add. Yet here we are contemplating another piece of

legislation at this committee whose essential impact will be to make it still more expensive to do business in this country and less attractive to invest.

My point is—and I will close on this, Mr. Chair—that whatever you believe about the merits of giving organized labour a long-cherished weapon at the bargaining table, you cannot consider this bill in isolation. When Canadians next go to the polls, whenever that may be, they will not be casting a ballot on the basis of this issue, and certainly not this issue alone. They will be considering which party to trust with the job of guiding our economy through some complex and daunting global challenges. They'll be asking each of you, in every party, what you have done and what you will do to help our economy to grow, to help communities attract more jobs and good jobs, and to help sustain the public services that those jobs and their incomes pay for through their taxes. Frankly, if you vote for this bill, you will be hurting that cause and not helping it.

Mr. Chair, thank you.

**The Chair:** Thank you, Mr. Stewart-Patterson.

Now we're going to move to the Retail Council of Canada.

Ms. Furlong, you have seven minutes, please.

**Ms. Kim Furlong (Director, Government Relations, Retail Council of Canada):** Thank you very much.

Good afternoon. My name is Kim Furlong, and I am the director of federal government relations for the Retail Council of Canada.

Founded in 1963, RCC is the voice of retail in this country. We are a not-for-profit association representing about 40,000 stores of all retail formats, including independent merchants, regional and national retail chains, and online merchants.

With annual sales of close to \$400 billion, the retail industry is the second-largest employer in this country. In 2005, retailers injected more than \$7 billion dollars into the economy, through store design, construction, technology, and telecommunications. Indeed, retail is one of the most dynamic economic players in our economy.

On behalf of our members, we'd like to thank the committee for the opportunity to share our views before you today. We, too, had some concerns before Christmas that we wouldn't have a chance to appear, so I thank you.

Our perspective is anchored in the ramifications of the proposed changes to the Canada Labour Code for those who rely on the products and services of federally regulated employers. RCC believes the economic impact of the proposed changes will be extremely damaging to the Canadian economy. In an interconnected world, where economies of scale rely on the ability to move goods quickly and to interface with technology, the thought of having transport or telecommunications services in Canada suspended, even for a short time, is very alarming.

Supply chain logistics have evolved significantly over the last fifteen years. The days of big inventories in warehouses are no longer. Business models such as just-in-time delivery and lean production have become the cornerstones of our economy.

The ability to move goods efficiently is essential to Canada's competitiveness as a trading nation. The Vancouver port dispute is a haunting case in point. The disruption caused by the job actions of independent truckers in the summer of 2005 was devastating to our sector: containers just sitting there and the supply chain completely disrupted, costing the Canadian economy untold millions of dollars. This was one event, in one location, and relatively minor compared to what would happen should Bill C-257 become reality, and the cost was tremendous.

Aside from perishable goods and items that didn't make it onto shelves, such as back-to-school items, the cost of this labour dispute was far more significant than what was not consumed. In fact, the strike caused a loss of business for the city of Vancouver and its port workers. Because of the uncertainty created by the dispute, some importers, including several Retail Council of Canada members, have chosen to diversify their import routing and have altered shipping patterns by using other entry points, such as the east coast.

Members of this committee must consider the impact that a labour dispute under the guidelines of Bill C-257 could have on the economy of a region and on the workers in the long term. In fact, Bill C-257 threatens Canada's competitiveness. In a world where Canada is an exporting country and competing for a greater share of world trade, it seems nonsensical to implement legislation that brings instability to the investment and business climate. Canada's ability to attract foreign direct investment is not to be taken for granted, especially when we're competing against giants such as India and China, which are leading the way.

In addition, and very importantly, the traditional argument that our proximity to the U.S. market makes Canada a prime location to invest could easily be refuted if our labour laws were to interfere with the free flow of goods. Canada's competitive advantage lies in our ability to deploy just-in-time delivery to the U.S. market. Should airlines or railways be out of operation, this competitive advantage would be significantly damaged.

In addition to these transportation issues, a breakdown, even minute, in the telecommunications system would have a direct impact on the retail industry. Canadians are the world's top debit card users, and the vast majority of retail purchases are card payments. A slowdown in the processing of card payments would mean loss of sales for our members. A breakdown in the system would mean a slowdown in the Canadian economy.

It has been clearly demonstrated over the last few years that the dynamism of the North American economy is being fuelled in part by consumption. Canadian consumers expect to be able to have access to their bank accounts at all times, and they rely on credit for many of their routine purchases. An inability to approve a card transaction means no sale.

Again, we urge members of this committee to think about the larger picture and to consider what these changes to the Canada Labour Code could have on Canadians in general.

● (1550)

Having clearly defined the possible risks associated with the proposed legislative changes included in Bill C-257, we now turn our attention to the *raison d'être* of this bill.

After reviewing the recent history of federally regulated labour disputes, RCC does not understand the need for these changes. The proposed changes eliminate the delicate balance that was reached with the adoption of the Sims report in 1999. The report was the product of an extensive, tripartite, cross-Canada consultation led by Andrew Sims, and was assisted by a panel of experts appointed by the federal minister of that time to bring recommendations to modernize part I of the Canada Labour Code.

The expert panel in its report entitled *Seeking a Balance*, examined the issue of replacement workers and concluded that, and I quote:

Replacement workers can be necessary to sustain the economic viability of an enterprise in the face of a harsh economic climate and unacceptable union demands. It is important in a system of free collective bargaining that employers maintain that option, unrestrained by any blanket prohibition. If this option is removed, employers will begin to structure themselves to reduce their reliance on their permanent workforces for fear of vulnerability, to the detriment of both workers and employers alike.

The report also recommends that:

There should be no general prohibition on the use of replacement workers.

Where the use of replacement workers in a dispute is demonstrated to be for the purpose of undermining the union's representative capacity rather than the pursuit of legitimate bargaining objectives, this should be declared an unfair labour practice.

In the event of a finding of such an unfair labour practice, the Board should be given specific remedial power to prohibit the further use of replacement workers in the dispute.

The evidence shows that the 1999 changes have brought a balance to the labour climate. In 2005 and 2006, 97% of all collective bargaining agreements under federal jurisdiction were signed without work stoppage.

In conclusion, in light of the fact that this is a very divisive issue, and that the Sims report recommended against the inclusion of a ban on replacement workers, and that federally regulated sectors were chosen and put under federal jurisdiction because of their strategic importance to the functioning of our nation, the eagerness of proponents of Bill C-257 to shift the fine balance that was reached in 1999 is puzzling. The RCC believes that at a time when Canada faces tremendous pressure to be competitive with regard to the rest of the world and we need to enhance our productivity, the thought of implementing legislation that would send a signal to foreign investors that our key infrastructure industries could be hijacked at any moment by a labour disruption is not key to improving Canadian prosperity.

Thank you.

• (1555)

**The Chair:** Thank you, Ms. Furlong.

We're now going to move to the Canadian Council of Human Resources Associations. Joining us today are Mr. Law and Mr. Rensby.

Gentlemen, you have seven minutes, please.

**Mr. David Law (Chair, Canadian Council of Human Resources Associations):** Mr. Chair and members of the committee, thank you for hearing us today.

The Canadian Council of Human Resources Associations is an umbrella group of all of the provincial human resources associations in Canada. Those provincial associations have members numbering over 30,000.

Human resource professionals take a practical and, I would say, often non-ideological approach to issues of labour relations and human resource questions. It is in that vein that we're here today.

Before I begin, very quickly I'll say that I can imagine it is fatiguing for you to hear the same arguments repeated from different sources, over and over again. You have our sympathies on that. We'll try to resist the urge to do the same.

But I will offer this thought, which is that the fact that so many parties have stepped up so vigorously with such an intense view on the bill, although fatiguing to listen to, nonetheless speaks I think to a feeling about the bill that is deeply felt and that frankly involves concerns that are very broadly held.

In that vein we go to a couple of key points I want to make, and then I'm going to turn to my friend, Mr. Robin Rensby from the Federal Bridge Corporation to complete our submission, if I may.

Essentially, this bill touches at least three concerns: those of employers; those of workers; and those of the broader Canadian public. You've heard a long list of business and employer concerns about the bill.

If I were to reach for one principal concern, it would be that employers will be rendered unable to operate their businesses and to deliver services to their customers through their normal bargaining unit member employees if the bill becomes law. That's what the bill says.

Essentially what it means is, in a lockout or a strike, one of the parties will be rendered incapable of operating, of making a living.

If you want to know how perverse that seems to those of us who are labour law practitioners and those of us in the human resources field—I'm a lawyer and I do labour law—consider this alternative example. Consider a bill that does the reverse, a bill that says that during a strike or lockout, management can engage alternative replacement labour, but the members of the bargaining unit are not permitted to make a living anywhere else during a strike or lockout. If that strikes you as an absurdity, it should, because it is absurd. And by the same point of view, it's absurd to say that employers should be incapable of operating their businesses during a strike or lockout.

The purpose of a strike or lockout, frankly, is to inflict pain and discomfort on both sides of the bargaining equation—so that they learn that the extreme demands they have are not reasonable, are not practical—and to bring those parties together. To force them to see the light, they need to cooperate. That's why we have a system of labour interruption in our labour law. This bill will profoundly alter that, and I would say, essentially, subject one party to all the pain.

We have a bit of a rule when it comes to any kind of bargain, which is that a good deal is one that both parties feel regret about; both parties suffer a little.

If you look at the opposing sides of the argument you've been listening to, I would submit to you that only one side is expressing concern and discomfort about this, and one party doesn't seem to be feeling any pain at all. That's telling, and it's telling because in our labour law tradition in this country, we build labour law the way we build contracts, the way we build collective agreements, the way you build legislation among yourselves: through deliberation, through research, through consideration, through negotiation. And then you land at a point where you have enough of a consensus to move forward. In our respectful view, one of the deeply troubling aspects of this bill is that that dimension of its development isn't there.

I teach a class at Queen's University Law School. I asked my students this morning whether they had any questions or issues about this bill. One of the students asked me—and I thought it was one of the best questions I've heard—what problem this law is solving. That was the question I was asked by my student, and I thought, what a great question.

Exactly what problem, what crisis, what emergency is being solved in labour relations in the federal sphere by this proposed bill? I can tell you, honestly—although I am a management-side lawyer and that may colour your view of what I say—I don't see that crisis. I don't know where that is. I'm not aware of those emergencies.

So it is hard for me to understand why we are rushing headlong into amendments to a law that works so well for so many parties and that is truly balanced.

• (1600)

I would submit to the committee to ask yourselves the question, exactly what problem is this bill supposed to solve? Then a corollary question that may be more potent is, exactly what problems will it create? You've been hearing a lot about that.

Our quarrel is largely with the process around this. We don't believe it reflects the traditions of Canadian labour law. We don't believe the changes substantively reflect our traditions of balance either. I would respectfully suggest to the committee that as an example of how to build labour law in this country, as an example of our tradition at work, there's a fresh one in my hand. It's called "Fairness at Work: Federal Labour Standards for the 21st Century", and it's the product of Professor Harry Arthurs, who led a task force appointed by the previous government. It was delivered to the current government in October of last year. It consulted with all the stakeholders on key issues of employment standards in the federal sphere. It is a great product. It has the consensus support of all parties. Government, labour, and management that were involved in this through the task force yielded these results, which they generally support. That's the way we've built labour law in this country.

Mr. Chair, we appreciate very much the opportunity to speak to you on this, and if my friend, Mr. Rensby, could have a few moments, I'd be grateful for that. Thank you for your attention, and if we can offer any other answers to questions you have, we'd be glad to do it.

Mr. Rensby.

**Mr. Robin Rensby (Senior Director, Human Resources, Canadian Council of Human Resources Associations):** Thank you. I will be very brief. I echo David's comments that we appreciate that you have allowed us to come before you today.

My perspective is somewhat narrower, and it is that of an employer who has bargaining unit members who may well be implicated in this whole process. So I would start by saying I support David's comments about the need for rigorous consultation and analysis of the whole framework of labour relations in this country before moving forward. In Bill C-257, it seems to me, one has to ask the question about things like essential services—I know you have heard about these from other people—the requirement to bargain in good faith, and the potential for upward pressure on public sector wage rates. To me, it comes down to a very simple question: how does this bill make the framework better? When I read it, I can't find a good answer to that question.

I would point out that I see a number of references to the provincial models, and I would echo some of the comments you heard earlier today that the provincial models may not be appropriate. Some of the comments say those bills were passed in provincial jurisdictions and days lost to strike went down, but I haven't seen anything that talks about cause and effect. Would an employer capitulate and sign an agreement they might not otherwise sign in the absence of this kind of legislation? I would argue that may well be the case.

In the interests of time I'm going to cut to the only image I would ask you to consider. In our 2005-06 annual report we reported that there were about 140 million transits across our bridges in the greater Montreal area. As I read section 87.4, the definition of essential services, it is arguably the case that we could not define those bridges as an essential service. While it may sound somewhat circular, we might then close the bridges in the best interests of public safety. I would just ask you to keep in mind an image of 140 million transits per year and the bridges in the greater Montreal area

closed. If this is a result of Bill C-257, I fail to see that it's a good result.

Thank you.

**The Chair:** Thank you, Mr. Law and Mr. Rensby.

We're now going to move over to Mr. Hogue.

• (1605)

[*Translation*]

**Mr. Bernard Hogue (Vice-President, Public Affairs, Fédération des chambres de commerce du Québec):** Thank you Mr. Chairman.

The Fédération des chambres de commerce du Québec is pleased to be able to file a formal notice concerning Bill C-257, which is currently being studied by the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities. We believe that it is imperative to submit to Canadian parliamentarians the opinion of our federation and our members concerning the appropriateness and scope of this proposed amendment to the Canada Labour Code.

First of all, we would like to remind people that the federal government has sole jurisdiction over labour, and this jurisdiction confers upon the government and its agencies a great responsibility with respect to decisions that may affect Canadian industry's capacity to perform, to remain competitive and productive, and to meet the challenges of globalization and the economy. As it happens, a current provision of the Code already states that an employer may not use replacement workers for the purpose of undermining a trade union's representational capacity. It nevertheless has the flexibility required to use replacement workers to meet operational responsibilities.

We further note that the Canadian Labour Relations Board has never, since 1999, been required to rule or take action against an employer with regard to this issue. From this standpoint, Bill C-257 does not address any immediate imperatives or any problems that have recurring effects. This legislative measure is rightly of concern to employers, who are under federal authority for labour relations purposes, and it should also be a serious concern to all companies located in Canada. This amendment to the Act constitutes a real threat to the flow of Canadian trade activities and could have a major impact on the financial health, if not the long-term viability, of many companies across Canada.

At the moment, only two Canadian provinces, Quebec and British Columbia, have prohibited the hiring of replacement workers in the event of a strike or lockout. The reason these provinces did so was to reduce the risk of violence on picket lines and to potentially encourage speedier labour dispute resolution. However, from the strict statistical standpoint, if the situation in Ontario, a province that has no legislation in this area, is compared to the situation in Quebec and British Columbia, there is nothing to indicate that there are solid grounds for Bill C-257.

There is no evidence that legislative measures concerning replacement workers reduce the number of work stoppages. Indeed, according to a survey recently conducted by Human Resources and Social Development Canada's Workplace Information Directorate and Statistics Canada in 2005, Quebec had proportionately twice as many work stoppages as Ontario, and more than four times as many work stoppages as industries under federal jurisdiction. Nor is there any evidence that legislative measures for replacement workers reduce the average length of work stoppages. For example, the same survey revealed that despite the Quebec legislation, the average length of work stoppages in that province increased from 37 days in 1975, 1976 and 1977, to approximately 47 days by 2003, 2004 and 2005. Furthermore, the length of work stoppages is consistently longer in Quebec than elsewhere in Canada.

In fact, several university studies on the impact of anti-strikebreaking provisions on the frequency and length of strikes have shown that anti-strikebreaking provisions tend to increase the likelihood and length of work stoppages. Allow me to mention a few examples.

The Landeo, Nikitin study in 2005 stated that the availability of replacement workers reduced the likelihood of a strike. The study was on the education sector.

The 2005 Singh, Zinni Jain study said that the potential impact of replacement workers depended on various factors, including the type of industry in which the employer was engaged, but that these workers could cause antagonistic union-management relations.

The 1999 Cramton, Gunderson and Tracy study found that the average length of a strike was over 32 days in jurisdictions where there were anti-strikebreaking provisions and that the probability of a strike was 12% higher.

The 1996 Budd study said that the average length of a strike was more than 27 days and that the probability of a strike was 5% higher.

The 1990 Gunderson, Melino study said that the average length of a strike was more than seven-days longer.

The 1989 Gunderson, Kervin, Reid study said that the anti-strikebreaking provisions in Quebec had led to an increase in the number of strikes.

The Fédération des chambres de commerce du Québec believes that the enactment of this amendment to the Canada Labour Code would not serve anyone's interest. In fact, it appears to concede an obvious benefit to the union side by blocking a company's operational capacity when there is a strike or a lockout. However, we believe that the scope of the amendments under review is even more threatening to the whole Canadian economy.

The Canadian government and Canadian parliamentarians surely need no reminding that we are living in 2007 in a context of global trade and stiff competition. Even a brief absence from a marketplace or a loss in productivity, for however short a time, leaves firms vulnerable to fierce foreign competition that is often not governed by labour laws as highly developed as ours. From this standpoint, the case of major infrastructure industries is particularly revelatory with respect to the potentially harmful economic consequences of such a

legislative measure. The industry is one that offers a range of services that most other companies and businesses depend upon.

• (1610)

For example, a work stoppage and an interruption in a telecommunications industry's digital transmission line service or operations has a direction impact on the financial transaction capacity of Canadian businesses and citizens, and has repercussions on everyone's lives. Canada is a generous country that has worked for a just society ever since it was founded. However, our productivity remains deficient in several respects. Our competitiveness is limited by a set of factors that increase our production costs and fail to attract foreign investors. The passage of Bill C-257 would not reduce violence on the picket lines because there are many different factors involved in violence, most of which have to do with the discipline exercised by the unions themselves over their members.

Nor will it shorten labour disputes, because there is nothing to indicate that this ever happened in Quebec or British Columbia. However, there is a risk that it could jeopardize the ability of industry and companies to maintain a minimum capacity required for them to remain a presence in domestic and international markets and preserve long-term jobs. It will also definitely further politicize labour disputes by involving the House of Commons much more often in matters of return-to-work legislation.

To conclude, I would say that under the circumstances, the Fédération des chambres de commerce du Québec would like to add its voice to the many organizations, industries and companies that are concerned about Canada's economic health and that are asking you to withdraw the bill. We are in favour of strengthening our ability to face the new challenges of globalization and we believe that Canadian parliamentarians are in the best position to understand the nature of the challenges we have to meet.

Thank you once again for having invited me and for having listened to me.

[English]

**The Chair:** Thank you, Mr. Hogue.

We're now going to start the first round of questioning with the opposition party, the Liberals.

Mr. Silva, you have seven minutes.

**Mr. Mario Silva (Davenport, Lib.):** Thank you very much, Mr. Chair, and thank you to the witnesses for coming forward before the committee.

First of all, many of the witnesses spoke about the economic consequences if this were to be passed into law. As you are all aware, there is already a law in place both in Quebec and in B.C. Do you have, any of you, any empirical evidence of any negative economic impact the law has had in those two provinces?



**Ms. Kim Furlong:** I will just say that empirical evidence is not with me right now, but the 2005 strike in the port of Vancouver had nothing to do with retailers in the first instance, yet the repercussions for our industry were tremendous. Various retailers will give you different figures—a figure is a figure—but the impact was beyond words. One piece of the supply chain was disrupted and the ripple effects were unbelievable.

**Mr. Mario Silva:** Mr. Chairman, I'd like to ask a question I asked yesterday.

Yes, Mr. Law.

**Mr. David Law:** Just in response to your question, I believe that Monsieur Hogue referenced a series of studies, some of which we're familiar with, that speak exactly to the point of economic disruption in these provinces on the basis of prolonged strikes. Prolonged strikes have a severe impact on both parties to the labour bargain, particularly on workers who are on strike and on the communities in which they live and on the businesses that depend upon them. And of course all the businesses that feed businesses that are on strike are affected by longer strikes as well.

So I would suggest, and I'm just following up on Monsieur Hogue's extremely able remarks, that his submissions include reference to a series of empirical studies that would guide the committee in response to your question.

**Mr. Mario Silva:** I would hope that all of you would agree that in B.C., where legislation is in place, the economy is booming. I don't think we need empirical evidence to find out how booming that economy is.

**Mr. David Law:** It's booming in Alberta too.

**Mr. Mario Silva:** They can't find workers. I'm sure those replacement workers.... It's hard to actually find any workers in that province.

**Mr. David Stewart-Patterson:** If I may speak to that point, the fact is that what we're talking about here is a structural change in labour law. What we're enjoying in Canada is a very prolonged period of economic growth. We're into our fifteenth consecutive year of growth across the country, and that's due in part to some smart policy choices we made in the past, whether that was getting into free trade or getting government finances in order. The fact is, labour law is not the only thing that affects economic performance.

The point I'm trying to make is that there are two effects. When we talk about federally regulated sectors, we are talking about industries that have a broader impact on the economy than industries that are regulated at a provincial level, and therefore the follow-on consequences of labour disruptions are more significant. They also will tend to have more of an international profile. One big strike in a major port like Vancouver is noticed, and not just in terms of the immediate economic consequences within Canada. It's noticed internationally by people who ask if they can rely on that as a point of entry.

If I'm not mistaken, I think both your party and the government party have supported one version or another of a Pacific gateway strategy. You see that as a way to help this country grow.

•(1615)

**Mr. Mario Silva:** Strike disruptions have a negative impact both on the employees who go on strike and of course on the economy. None of us is arguing that nobody should go on strike; that's a fundamental right. I think you would agree that people have a right to go on strike or not to go on strike.

**Mr. David Stewart-Patterson:** Absolutely.

**Mr. Mario Silva:** Do you believe they have a right to go on strike?

**Mr. David Stewart-Patterson:** Of course.

**Mr. Mario Silva:** Obviously, there's going to be a consequence if they go on strike, but the consequence doesn't take away from the fact that they have that right.

**Mr. David Stewart-Patterson:** No, it doesn't. The point is that this bill doesn't change that right; all it does is change the balance of power at the bargaining table and therefore change the likely outcomes over time.

**Mr. Mario Silva:** You mentioned the likely effect of this bill is that there will be more financial gains to the employees. Certainly, you represent CEOs. I don't think any of your members would disagree with more financial gains when they go to renew their contracts.

**Mr. David Stewart-Patterson:** Again, the question is if it's in the national interest to change the balance of power that currently exists.

**Mr. Mario Silva:** Okay, but you wouldn't argue against not having financial gains for your own members?

**Mr. David Stewart-Patterson:** Our members, like individuals who have to negotiate a contract on their own as opposed to collectively, are in a situation where they have to justify compensation based on performance. Collective bargaining is a slightly different context, in the sense that you're bargaining for a group of people, and obviously performance still matters because if the company can't make money, sooner or later it's going to go out of business and people will lose their jobs. That can happen at the individual level too.

**Mr. Mario Silva:** Mr. Law, you mentioned a comment one of your students made in class about why we are trying to change. When you go before the students and talk about laws and the importance of laws, are laws written for 98% of the people who obey the laws or the 2% who don't obey the laws?

**Mr. David Law:** It depends on the laws. Labour laws are written for 100% of the community that is subject to them. No one is exempt, if they're subject to those laws.

**Mr. Mario Silva:** If there is, for example, a situation, as there has been in the past, where people have brought in replacement workers, there have been violent situations, prolonged strikes, and the situation ended up not being very healthy afterwards, isn't that a problem in the present system that needs to be resolved?

**Mr. David Law:** It is, sir.

I think strikes are always a problem. Part of the purpose of strikes is to be a problem; that is to inflict some economic disruption on each party but not to paralyze them. What's proposed here is to paralyze one of the parties to render it incapable, essentially, of operating or earning without having the same impact on the other party.

**Mr. Mario Silva:** You're a labour expert, and I'm sure you've read about the fact that you can't even go on strike unless you iron out the issue of essential services. How can you go on strike if you can't first of all go before the board and ask for a ruling on the essential services provision?

**Mr. David Law:** Essential services are an exception to the right to strike. You spoke eloquently about the right to strike, and I share your feeling on the subject. It is what workers have. It is the prime instrument workers have, and we don't quarrel with that, so please don't read that into anything you've heard here.

The exception to the right to strike is insofar as public safety is proven to be in peril. Certain workers, not all, will be asked and required to continue to work notwithstanding a law that's proposed that will prevent anyone else from working, which by the way includes preventing anyone who wants to go back to work from going back to work if they're members of a bargaining unit, and that's happened more than once.

**The Chair:** Thank you, Mr. Law and Mr. Silva.

We're going to move now to the Bloc.

Madame Lavallée, seven minutes, please.

[*Translation*]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Thank you, Mr. Chairman.

Thank you for coming to testify. I also thank you for your excellent presentation.

What you said is important, but we have heard these arguments many times. In fact, employers always put the same arguments forward. There is currently an imbalance in bargaining powers and you take advantage of this imbalance. Needless to say, you do not want to lose your privileges. We understand that.

Although the chairman requested that I ask you questions, I am going to give you some arguments instead. Normally, the group of witnesses is better balanced and at least half of them would be presenting the position of the union party. You are the first group not to have any. I will try to explain to you why the Bloc Québécois has introduced this bill for the 10<sup>th</sup> time. I will answer Mr. David Law's questions and explain to him what problems this bill solves. Please take notes; that way, you will be able to explain it to your students.

This is the 10<sup>th</sup> time in 15 years that the Bloc Québécois has introduced this bill. Even the current Minister, Jean-Pierre Blackburn, voted in favour of this bill when he was a Conservative MP. As you will be able to see, many people find solutions to their problems in this bill. It is well designed. I am less familiar with the situation in British Columbia, but I can say that in Quebec, the same act has been in force for 30 years.

Why did the Quebec government pass it in 1977? It was in the aftermath of a dispute that involved a great deal of violence at the United Aircraft company, which is today called Pratt and Whitney. That same year, at the Robin Hood company, the security guards who had been hired to allow strikebreakers to enter had fired on people and some were wounded. It was crazy. In August 1977, René Lévesque had the Anti-strikebreaking Act adopted. Several years later, when employer representatives suggested to Robert Bourassa, who had become the Premier in the meantime, that he get rid of the act, he refused, arguing that there had been social peace.

You presented scores of numbers and referred to many studies. I too will speak to you of numbers. In fact, the most important statistic of all is the number of person-days lost. However, Quebec cannot be compared to Ontario. Quebecers are much more highly unionized than Ontarians. As there are more unions and union members in Quebec, there are more strikes. What needs to be compared is the number of person-days lost among workers under the Quebec Labour Code and workers under the Canada Labour Code. The latter lose far more days of work because of disputes.

For example, in 2004, workers subject to the Canada Labour Code, representing less than 8% of the workforce, were responsible for 18% of lost person-days. I am using the 2004 figures because they are the most recent available, but I could also quote you the figures from 2002. In 2002, workers subject to the Canada Labour Code represented only 8% of the workforce, but 49% of person-days lost were attributable to them. This statistic is very revealing, particularly as the Minister of Labour, Jean-Pierre Blackburn, had previously voted in favour of anti-strikebreaking legislation when he was only an MP and there were no limousines at stake.

Last May, when we introduced the bill, he presented many different figures, but each time, we were able to show him that the statistics were being used improperly. He then stopped using arguments from the Institut économique de Montréal, the Fraser Institute and from John Budd, this management consultant from the University of Minnesota who was very well-known in the United States and whom you also cited. He often consults on behalf of management, who often have a highly conflictual attitude towards their employees. He is well-known for his right-wing ideas.

● (1620)

All these people conduct studies, gather numbers that suit them and prepare fine studies for you, the management representatives, and that suits you just fine. Then you throw these figures at us.

Mr. Hogue, you should know that when a strike lasts a long time in Quebec, and there is vandalism and violence on the picket lines, it is always at an organization that is under federal regulation. We know it, we can see it, and we don't need statistics. I will mention a few of these companies to you. At Vidéotron, the strike lasted 10 months. As you are aware, Vidéotron hired strikebreakers and it turned out very badly. There was a great deal of vandalism that caused damage to the employer's facilities. The 2,200 employees were angry and in the end returned to Vidéotron after a 10 month dispute. The strike at Sécur, which had 900 employees, lasted three months, and there again there was vandalism, with the employer's facilities damaged, including ATMs. The Cargill strike at Baie-Comeau lasted 36 months.

•(1625)

[English]

**The Chair:** Ms. Lavallée, you have one minute left.

[Translation]

**Mrs. Carole Lavallée:** It lasted 36 months. The strike at Radio-Nord in Abitibi lasted 22 months, and most pathetic of all was a small radio station in Bonaventure that had only 12 employees. The strike lasted three years, and at the end of two years, the 12 replacement workers asked for union certification.

I could of course go on and raise many other arguments, but I just wanted to show you that replacement workers are not in a normal situation: they are sub-employees who do not have the same rights as other employees, and who do not even have the right to unionize. This is not normal. The act has been in force in Quebec for 30 years, and things have been fine for 30 years. There is a level of social peace that should also be available to workers whose employment is governed by the Canada Labour Code.

[English]

**The Chair:** You're right on seven minutes. There you go.

[Translation]

**Mr. Bernard Hogue:** Mr. Chairman, may I answer—

**Mrs. Carole Lavallée:** No!

**Mr. Bernard Hogue:** —even if it is not a question.

[English]

**The Chair:** We'll give you a chance maybe in the upcoming round. That's all her time.

We're going to move to Ms. Davies, from the NDP, for seven minutes, please.

**Ms. Libby Davies (Vancouver East, NDP):** I guess you're hoping I won't take seven minutes.

First of all, thank you for coming.

On the warnings that you're putting across the table here, we've heard them before, even from the minister, and one would think the Canadian economy is going to crash. There's a lot of rhetoric and hyperbole about this bill, but if you look at the actual experience, for example, in Quebec and B.C., where there's over 45 years of shared experience in banning the use of replacement workers, neither province has suffered a dramatic increase in labour costs. There has been no flight in business investment or a shutdown of central services. In fact, the economy has grown. The reality is very different from some of the arguments we're hearing.

Frankly, I'm very surprised, Mr. Stewart-Patterson. You represent the wealthiest in our society. You're from the Canadian Council of Chief Executives. I thought you had a lot of gall to say this bill is somehow giving unions more leverage for greater financial gains. I don't understand your rationale on that at all. If we want to get into that, if that were correct, then maybe we had better look at the statistics.

On average, Canadian workers earn about \$38,000 a year, compared to the top 100 CEOs in Canada, who range from \$2.8

million—and that's the lowest of the 100—to \$74 million. Those are some of your members, so it's not exactly a level playing field.

If you add on the information from the *Canadian Economic Observer*, from StatsCan, it's pretty clear that non-financial institutions and in fact financial institutions are doing pretty well. Non-financial corporations enjoyed an \$80 billion surplus in 2005. So if that's what you think this bill is about, that it's somehow just going to give workers more money, then look at your own side of the equation as well.

In actual fact, this bill is about ensuring that there is a level playing field in terms of what happens when a strike takes place. The evidence shows us that a prolonged strike, with the use of replacement workers, can create violence. It can create an enormous amount of instability. It can detract from the real issue of actually settling the strike, of what caused it in the first place, because the issue then becomes replacement workers and what's happening there.

We have all kinds of examples to show where the absence of this kind of legislation under the federal jurisdiction, whether it was in Quebec with Videotron or whether it was in B.C. with the TELUS situation, has caused a lot of suffering.

We really need to focus on what the reality of this bill is about, and not somehow on the idea that this is going to be a lever for workers to gain more than their due. I'm actually really very surprised at your argument, and I don't think you're really focusing on the elements of this bill.

I would ask a question similar to that of the Liberal member. What evidence do you have to show that this bill, if it were implemented, would harm or has harmed economic activity and performance overall? I don't think there is any. The onus is on you to show us that if you believe it exists.

•(1630)

**The Chair:** Mr. Hogue.

[Translation]

**Mr. Bernard Hogue:** I would like to answer your question by suggesting a consideration of the question from another standpoint. The concern of business people in Quebec is as follows: we already have this act and there is no evidence thus far to show that it has had the desired effect in Quebec. Ms. Lavallée had some figures, but I have others that show the opposite. I could, for example, give you as an example the strike at the Société des alcools du Québec that affected 3,800 employees. The strike began on November 11, 2004 and lasted three months, in spite of the legislation. A strike that opposed the Noranda Mine Workers Union—a CSN affiliate, at Métallurgie Noranda-Horne Smelter involved 500 employees. It began in June 2002 and lasted 11 months. It had been hoped that such legislation would shorten the length of strikes, but on the contrary, it did not appear to make a difference in Quebec.

Another aspect needs to be considered, and this is perhaps in response to the question from your colleague, the MP opposite. The problem being experienced in Quebec at this time is the following. We are having a great deal of difficulty in attracting our share of foreign investment in Quebec because foreign entrepreneurs and business leaders consider Quebec to be a society in which the legislation is very burdensome. The more layers of sedimentation that are added to the legislation, the more investors consider that their investments are at risk. If we lose other economic benefits, it is at least partly because of this problem. Foreign businesses and entrepreneurs hesitate to invest in Quebec and opt for other provinces in Canada. It is because of this problem in Quebec that our employers are concerned.

Let us simply consider the statement made by Donald J. Johnston, the former Secretary General of the OECD, a respectable man, who has respect and who is thoroughly familiar with labour problems. He said that the number of unjustifiable restrictions to market rules was undermining productivity and the attractiveness of the Canadian economy in the eyes of foreign investors. In Quebec, this can already be seen to be significant.

I would also add that in terms of the number of days lost per 1,000 workers—and these are recent figures—the number lost is one and a half times higher in Quebec than in Ontario on a comparable basis.

[*English*]

**Ms. Libby Davies:** Any strike has an economic impact, but I think the issue we're trying to deal with here is that the use of replacement workers is actually prolonging that dispute and actually limiting the ability of the parties to get to the table and to come to a collective agreement, to settle it.

We're not talking about strikes here. The strike in the port of Vancouver, I understand, had a huge impact, but that was about the strike. This is about replacement workers and whether or not they can be used.

The absence of replacement workers means there is then more focus on dealing with the strike and getting it resolved. Ending it earlier, I'm sure you would agree, is preferable to having it dragged out, because, yes, there would be a greater economic impact then.

**The Chair:** Thank you. That's all the time we have. We are going to move on to our next questioner.

Mr. Hiebert, from the Conservative Party, for seven minutes, please.

**Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC):** Thank you, Mr. Chair.

Just to make a quick response to what Ms. Davies had to say in terms of replacement workers not prolonging strikes, we've heard all kinds of reports going back and forth from witnesses before this committee citing studies that say the replacement worker legislation does not diminish the length of strikes. So it's kind of frustrating for me to hear members opposite contradicting evidence provided by witnesses, and I think at one point we should try to dispel those myths once and for all.

I think it's important for the members of this committee, especially the new members, to recognize that right now the federal government has the lowest work stoppage rate in the country, lower than any province. So when Mr. Law asks what is the problem we are trying to fix, it's a very good question. Because if we already have the lowest work stoppage rate in the country, why are we trying to mess with success? Things are obviously working very well, and to interfere in the process, I think we've heard many times now, would have dire consequences.

It's also been mentioned by one of my colleagues across the way that B.C. is booming in spite of the replacement worker legislation that was adopted in 1992. I would invite Mr. Silva to consider the fact that in 1992 the economy was not booming. I mean, it might be booming now, and it has been for a couple of years, but that was certainly not the case throughout the last 15 years. There have been many times where B.C. was not the lead economy in the country, and it's been in spite of the fact that this legislation is present that we've had some gains.

Perhaps you'll recall from a few days ago that the representative from the B.C. business council said B.C. is still losing businesses, in its current climate, as a result of this legislation.

I also want to note, for the benefit of all members, that this legislation has been rejected nine times. Nine times it's come before a committee just like this, with very smart individuals sitting around the table, with expert witnesses giving testimony, and nine times it's been rejected.

I don't often give Liberals compliments, but in this instance, Liberals rejected this legislation nine times, and I want to give them credit where credit is due.

• (1635)

**Mr. Mario Silva:** We don't like Trojan horses.

**Mr. Russ Hiebert:** It's also been mentioned by the Bloc that Minister Blackburn voted for this legislation and then changed his mind. Well, it's important to note that he voted for this legislation in 1990, which was well before the Sims report. It was only after the Sims report that he changed his position. Clearly, deferring to the experts and the years of time they took to evaluate this matter had its impact. So let's stop suggesting that this is a sham. There were very good reasons behind why he changed his vote.

My question to Mr. Hogue would be whether you could help us understand the difference between your legislation in Quebec and the federal legislation, and the impact a federal strike would have if it were to occur.

[*Translation*]

**Mr. Bernard Hogue:** Indeed, the difference between the two is not that great. We are experiencing a major problem in Quebec: and that is that the act has not reduced the number of strike days. With respect to the bill that has been introduced, we do not think that there would generally be a significant difference in the number of strike days.

If we compare the situation in various provinces between 2003 and 2005, per 1,000 workers, 132 days of work were lost in Quebec because of strikes. During the same period, the number in British Columbia was 59, and in Ontario, 81. Of course, there is more unionization in Quebec than in the other provinces of Canada. This may have an impact, but it did not have a beneficial influence from the standpoint of labour relations. The strikes are just as long, often longer, and workers use the legislation to make the strikes last longer. And contrary to the figures that are often thrown out about the number of days of work lost in Quebec because of strikes, one cannot say that there has really been any significant difference in terms of the act having beneficial impacts in Quebec. Of course, there is the possibility of calling—

[English]

**Mr. Russ Hiebert:** I note that Quebec still has the highest labour rate stoppages in the country. Basically you're saying that this legislation has not solved the problem; in fact, it may have made it worse. Is that correct?

[Translation]

**Mr. Bernard Hogue:** Precisely. It does not solve the problem, it does not provide conclusive evidence.

[English]

**Mr. Russ Hiebert:** The angle I'm trying to pursue here is this. We've heard testimony suggesting, even just today, that the work stoppage in B.C. at the ports, the recent strike that occurred, had ripple effects across the country. What would happen if a federal industry was shut down as a result of a strike? Can you explain for the members here the impact on consumers, the impact on Canadians?

A common question that I've been asking is, what would be the consequences for ordinary Canadians if this legislation was to pass? We've heard about a lack of groceries on store shelves. There's a lack of—

• (1640)

**The Chair:** One minute, Mr. Hiebert.

**Mr. Russ Hiebert:** I'll stop there. Please answer the question. What's the consequence to ordinary Canadians?

**Mr. David Law:** One consequence is you should consider the jurisdictions in question. What's under federal jurisdiction? Shipping, rail, air transport, telecommunications—these are not incidental items to our economy. They are the sinews of the economy. They are the infrastructure upon which all businesses hinge, and you've heard about that from our colleagues.

The ripple effects will be more profound than perhaps a strike localized in a province to a provincially regulated business. If it isn't an essential service exception, which are exceptions, this will simply happen. The strike at the port of Vancouver is an example of the consequences of this kind of a strike taking hold, of the kinds of strikes that have taken hold in Quebec since this legislation became law.

**The Chair:** Thank you very much, Mr. Law and Mr. Hiebert.

Mr. Hiebert, I'll maybe just point out as well that this legislation has never actually made it to committee before. It has always died at second reading.

**Mr. Russ Hiebert:** For good reason.

**The Chair:** I'm going to move to our next questioner.

For five minutes, second round, Mr. Savage.

**Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.):** I'm going to let Mr. Dryden have the first 55 seconds.

**The Chair:** That's fine.

**Hon. Ken Dryden (York Centre, Lib.):** All of this is a matter of credibility. You've heard the arguments from the other side. The arguments from the other side would say that in fact it is also a question of balance, and from their understanding of balance, the system is out of balance the other way. For all of us listening, it is a question of credibility.

As the point was made here earlier today, the key question is, what has the impact been, not between Ontario and Quebec, but between Quebec and Quebec at different times before the legislation and after? It's the same in Ontario, where the changes have happened. It's the same in British Columbia. What has the impact been?

I was given this study today that was prepared by the Canadian Bankers Association, and the number of person days lost per million, which is the lower one here—and it goes back to 1976, and this is in Ontario and Quebec—was dramatically different before the legislation in Quebec. Then essentially it seems as if the labour environment changed in the province and things flattened out at a much lower level.

If you were to compare the last 10 or 15 years in Ontario and Quebec, it's not much different. It may be two and a half times different in 2005. If you went to 1996 and 1997, it would be two and a half times the other way. Essentially, year in and year out, it's roughly the same. If you flipped over and did the same in terms of B. C. and Ontario, again it flattened out; there's not much difference. There was a dramatic difference after the changes took place; the labour situation has changed a lot.

I would just caution you in terms of your comments. Again, it's a matter of credibility. The more you talk in terms of the sky falling when there's not any evidence here of the sky falling, it really does damage one's credibility in the whole thing. I would really caution you to imagine the other person's argument as you are giving your argument.

I would say exactly the same thing to the other side.

**The Chair:** Mr. Savage, for two and a half minutes.

**Mr. Michael Savage:** For a goal tender, you'd make a good penalty killer, because you killed a lot of time.

My question maybe follows up on that. The Liberal members are new to this; we've been studying this furiously, and I think we've become well educated on it. Unfortunately, the witnesses we are hearing are all of one side; it's not very balanced. We heard most of the labour point of view before Christmas, but we appreciate the fact that you came in and took the time.

We're not going to change a lot of views on this. I'm asking any one of you, either in the few seconds that I have left or after this, whether there are amendments to this. We're going to hear a technical briefing. Do any of you think there is something in this bill that can be amended that would satisfy perhaps both parties, that might satisfy you, or is it a matter of yes or no to this bill?

**Mr. David Stewart-Patterson:** If I may, the short answer to that question is a yes or a no. I don't think this is a problem that can be addressed by trying to fiddle at the margins.

But to come back to the question of credibility, I don't think anybody here is predicting that this bill by itself is going to cause the apocalypse. The fact is it's something that will tilt the balance of power at the bargaining table at the margins.

The point I'm trying to make is that you can look at it in isolation and ask this: is it going to change life in the country a huge amount, one way or the other? I would say no, but the fact is it's part of an overall economic strategy.

How many things is a governing party going to do? How many things is an opposition party going to propose that constitute a strategy for the country? What policy changes do we want to make that will help this country grow, create better jobs, and bring in investments? What policies are we going to propose that may have an economic cost but serve other objectives that are more important?

All I'm trying to say is this is something that will have negative economic consequences. You have to look at it as part of what you're going to propose as your overall strategy for making this country a better and stronger place.

• (1645)

**Mr. Michael Savage:** Thank you.

Does anybody else have a view on that? Does everyone agree with that?

**Mr. David Law:** Well, I would say this. It doesn't have to be an apocalypse to be a mistake. It doesn't have to bring the sky down to be the wrong move.

You're absolutely right. Dramatic rhetoric has a tendency to kind of denude the message of its quality, and it doesn't help. I appreciate that.

The bottom line is that it alters the balance that appears to work. The rationale for it is not evident. The violence it is purported to cure is not endemic. There was a crisis situation in the 1970s that had to be addressed in Quebec, perhaps dramatically. It was addressed and it worked. There is no crisis here.

Latterly, to go to a point I raised earlier, because I think it's important to parliamentarians, we don't make labour law like this in this country. Labour law is a saw-off. It's a compromise. It's a process of back and forth. It shouldn't be a political football.

An example of how not to make labour law is to look at what's happened in Ontario over the last 10 or 15 years, as the law has been bounced back and forth between very extreme views on how it should function, depending on who happened to hold the keys. We're now finally landing somewhere, back where we should be, around a consensus.

It's how this country has made labour law. I would urge you to consider that tradition. The tradition has real value. What worked in Quebec 30 years ago may have been necessary 30 years ago. Are we in those conditions nationally now? Is that the kind of crisis we face today?

I haven't heard any witness on either side of this debate offer any evidence of that crisis. The sky is not falling, but why make a mistake you don't have to make? It's the question that bedevils us.

**The Chair:** Thank you, Mr. Law.

Thank you, Mr. Savage and Mr. Dryden.

We're now going to move to our second questioner.

Mr. Lessard, for five minutes, please.

[*Translation*]

**Mr. Yves Lessard (Chambly—Borduas, BQ):** Thank you, Mr. Chairman.

First of all, I would like to thank our guests for their testimony. I think they will understand that we will not be able to decide on the fate of Bill C-257 merely on the basis of the fact that it has previously been rejected nine times. If that were the case, women would still not have the right to vote. It took many attempts before the House of Commons allowed women to vote. What I would like to address—and Mr. Dryden noted this effectively—is the question of whether the allegations concerning the fears that are apprehended are well founded.

Before asking Mr. Hogue a question, I would like to comment on your statements. My colleague Mr. Silva mentioned earlier that the economy in British Columbia was humming along nicely, etc. You replied that there had been constructive initiatives by companies, management, etc., and that these have yielded results. Are we to understand that if one day things were not going well, it would be because the province has passed an act prohibiting the use of replacement workers? That is what is being implied. If things are going well in British Columbia, despite the act, can we then say that it does not prevent the economy from doing well? We would therefore have to draw that conclusion as well, would we not?

Mr. Hogue, and you as well Ms. Furlong, mentioned that all of the effects of such an act on the workings of the new economy, which is based on rapid communications contacts for business, including the use of credit cards. Everything depends on cards, and the system is managed by the banks. At the banks, the rate of unionization is below 1%. We know that services are offshored. For example, when I called Visa for information, my call was answered in Italy. A colleague was also transferred to another country. You get my drift.

The question was well put by our Liberal colleague: where are the concrete examples to indicate that your concerns are well founded? In Quebec, there is no justification for such concerns, and there is no apparent crisis because the percentage of workers under federal authority compared to the total number of workers is approximately 20%. Each time there is a dispute like the ones my colleague mentioned earlier, there is always talk of percentages. For workers, they are genuine crises.

I will allow you to answer that.

• (1650)

[English]

**Ms. Kim Furlong:** I would start by saying that the person who answered your friend in Italy was probably in a call centre. There was no production involved, mostly servicing. At different times of the day there are different language skills. We see it in India. Outsourcing is becoming very common.

[Translation]

**Mr. Yves Lessard:** I am interrupting to ensure that we understand one another. Even though the service has been offshored, the rate of unionization in the banks is below 1%. The risk does not lie in that.

[English]

**Ms. Kim Furlong:** That being said, there might be a 1% unionization rate in a bank, but that's not to say that a bank would not outsource a system in terms of telecommunication and find another company that would provide it to them—

**The Chair:** You have one minute, Mr. Lessard.

**Ms. Kim Furlong:** —and that company would be federally regulated. There would be a breakdown in that system when someone shows up at a point of sale at one of my members' stores and can't use it because of a strike. We're just trying to say that if one link becomes weaker in a supply chain, there's a disruption.

We're not calling for the apocalypse. We're saying that in a very competitive situation, in which Canada is fighting and has to rethink its productivity as it looks to the 21st century—and this is what departments across town and politicians across party lines are thinking—how do we go forward when you bring forward a bill that could potentially harm the supply chain?

There's no evident reason we should implement this bill. My members are not saying yes or no; they're just saying they'd like to be here before you to tell you that there could be a risk and to ask if that risk is worth it.

**The Chair:** Thank you.

That's all the time we have, Mr. Lessard.

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

**Ms. Libby Davies:** Thank you.

I think you heard from other members that we've heard the basic arguments a number of times, and the positions are fairly well established.

I've heard repeatedly from business organizations the argument that the status quo is working, so why attack a problem that doesn't exist?

One of you just said—I think it was you, Mr. Stewart-Patterson—that this will alter the balance that appears to work. I think that's obviously what you're trying to put forward, that the status quo is okay, and if we go ahead with this, there will be negative economic consequences.

But I think actually, again, if you look at what has happened, for most employers this bill would never be used. Probably for over 97%, even the labour minister has said most labour disputes get settled and they don't go to strike. So we are talking about,

unfortunately, instances where things get really rough and they go very wrong.

I can think of two recently. There was the Ekati Diamond Mine strike in the Northwest Territories, and there was the TELUS strike in B.C., both of which were very protracted, both of which used replacement workers, and in both there were consequences in terms of morale and they went on much longer than they needed to because of the use of replacement workers.

So I actually don't see that the status quo is good enough. I think even the Sims report, which we've heard so much about, didn't reach a consensus on what they were doing. I would say they came to a compromise, but there was a minority report. In fact, in that minority report, I think Dr. Blouin sort of said to parliamentarians that this issue really hasn't yet been dealt with.

So I just really want to go at your argument that the status quo is okay, because I think we do have recent examples of where unfortunately there have been disputes, with replacement workers, and they have been incredibly unsatisfactory, to say the least.

No one is here to make some sort of willing mistake. There's a reason this bill is coming forward, to deal with those few unfortunate situations.

So I actually see this as a preventative measure. That's how I look at it. It's something that's actually preventative in terms of trying to prevent prolonged labour disputes, and I think that's a goal that everybody should share.

• (1655)

[Translation]

**Mr. Bernard Hogue:** In Quebec, this legislation exists and has not yielded any conclusive results. What would be the purpose of extending it to all of Canada when the known example we have in Quebec demonstrates that it did not reduce the length of disputes? It does not affect the length of the disputes. I would even say that it has done very little to address the sorts of problems that can arise on picket lines. During the recent strike at the Société des alcools du Québec, there was vandalism, even with the Quebec legislation. And in Quebec, of course, the Conseil des services essentiels takes action quickly.

[English]

**Ms. Libby Davies:** But if you look at the days of work lost, for example, in Quebec from, 1999 to 2004, about 2.5 million days were lost, compared to the same period, federally, of 7.92 million. There is a huge difference if we want to actually look at days of work lost.

There may have been difficult situations in those strikes in Quebec. I wasn't there, so I don't know, and I take your word for it. But when you actually look at the comparisons and compare Quebec to, say, the federal jurisdiction, which covers only about 15% of workers anyway, the rate of days lost is at least twice as high as it is in Quebec.

**The Chair:** You have one minute.

**Mr. David Law:** With respect, if the concern is violence at the picket line, essentially the answer offered here is to ban the replacement worker to alleviate the conflict at the picket line. Honestly, fundamentally, it is no better, morally or legally, than saying, "Ban the picket line."

Essentially, if the issue is managing tensions at a picket line, you are taking an enormous stick to deal with an issue that is serious but not catastrophic across the country. It seems like the wrong fix if that's the problem.

**The Chair:** Thank you.

We're going to now move to Mr. Brown for five minutes.

**Mr. Patrick Brown (Barrie, CPC):** Thank you, Mr. Allison.

I would look for some comments from Mr. Hogue and Mr. Law on the following question. When I look at federally regulated employees, I think of large networks that are spread out across the country, that are important infrastructure for the Canadian economy, possibly more so than is the case for provincially regulated employees.

When I see us embarking upon the slippery slope, my concern is the effect that doing so will have on the Canadian economy. I want to first of all get your comments on the repercussions it could have for the Canadian economy, but further, there is almost a fiduciary obligation on the part of the Government of Canada to keep labour peace. The Canada Labour Code recognizes the importance of maintaining essential services by giving Parliament the power to restrict a union's right to strike and to enact back-to-work legislation.

I think it is important to recognize that Parliament gave that power. Look at the Sims report. Since its adoption by the previous Liberal government in 1999, we haven't seen any use of back-to-work legislation. Why would we change course when we appear to be successful at seeing more labour peace today than we saw a quarter of a century ago? That trend appears to be continuing.

Ms. Davies mentioned that there was no consensus in the Sims report, but it did say that it wasn't appropriate to change course. Even the dissenting opinion was nothing to the extent as radical as this legislation is.

I wanted to get your comments on how you believe this is going to affect Canada in the long term. I would ask Mr. Law to speak first and then Mr. Hogue.

• (1700)

**Mr. David Law:** It won't be the apocalypse. I don't believe it will. We have to remember that federally regulated employers are not all huge businesses. There are many small and medium-sized businesses operating in support roles in the aviation and shipping sectors and so forth, which may be federally regulated. So it's not just these monster organizations. There is a bit of a fictional notion that large organizations are capable of withstanding any degree of economic hardship. I think we have to get past the notion that they should.

Ms. Davies made a point that I think is very important, and I want to be clear. Please don't characterize the negative view about this particular bill as necessarily a negative view about everything with respect to labour. The labour system actually does work. It's a balance. I know. I work in it. I watch it work.

If my clients suffer strikes, the other party suffers strikes. That's the point of a strike. The reason the parties don't go to strike is that they know what the effects of it will be on each other.

If we alter the instrument of the strike in the fashion described here, the effect will be simple. Almost all the pain, or a substantial amount of the pain, will be felt by one party instead of by both, because one party will be rendered incapable of functioning and the other will not. The other will still be able to get work, still be able to get strike pay. It's not good. It's not pretty, I know; it isn't, but that is a profound imbalance. I don't know what the effects on the willingness of people to invest, to put their money at risk, will be. These are all incremental things. They go to the nature of the quality of our enterprise, the quality of our environment to accept business risk.

Those things aren't nothing. Those are very real, and this law has struck a chord with a lot of folks in what you would call the business community, because they recognize what it means. They recognize that it is, as I keep saying, distortion and that it is disrespectful to the labour law methodology that we have adopted in this country.

I can't imagine that folks on the other side of this issue would like to be unilaterally treated to the counter-law that will inevitably come if this becomes law, because what do we expect to happen? Another Parliament will have to fix it, and goodness knows what they'll do. This shouldn't be a volleyball. Labour relations are too important to the economy to become a political volleyball. They're a very intricate and delicate thing. They are literally a house of cards.

**Mr. Patrick Brown:** On that point—

**The Chair:** There are 30 seconds left on that question.

**Mr. Patrick Brown:** On the point of rupturing the balance, I mentioned back-to-work legislation. Do you anticipate that we might possibly open the door for more back-to-work legislation by changing this balance?

**The Chair:** Could we get just a quick response, Mr. Hogue?

[Translation]

**Mr. Bernard Hogue:** I will answer your first question, if I may, because I believe it is important. In Quebec, it is not the end of the world, but a great deal of effort is being made to attract foreign investment, probably more effort than in the other provinces. If a Canada-wide additional layer of legislation is added, and this layer scares off foreign investors because of the relations this may require them to have with their workers here, they will not come to Canada. In this era of globalization, foreign investment is extremely important. Our companies in Quebec are having a great deal of trouble attracting foreign investment. I do not see why we would recommend to all Canadians that they jump into the same boat as Quebec when this legislation was passed.

[English]

**The Chair:** Thank you, Mr. Brown, and thank you, Mr. Hogue.

I'm going to move to the last round.



Ms. Dhalla, for five minutes, please.

**Ms. Ruby Dhalla (Brampton—Springdale, Lib.):** Thank you very much to all our witnesses for providing us with information and the particular viewpoints of yourselves and your member organizations.

My first question is for Mr. Patterson and then for Ms. Furlong. Can you please tell us how many members within your particular organizations are actually unionized?

**Mr. David Stewart-Patterson:** Not off the top of my head, no.

**Ms. Kim Furlong:** Unionization for the Retail Council—not retail in general, because grocers are not part of the Retail Council of Canada—would be about 4% to 5%.

**Ms. Ruby Dhalla:** So 4% to 5%?

**Ms. Kim Furlong:** Yes. Our industry is not a highly unionized industry, but we do interact heavily with unionized industry.

**Ms. Ruby Dhalla:** I believe Mr. Law touched upon this particular point with regard to the impact this law would have on small and medium-sized businesses a couple of times during his speech. Could you perhaps expand on that for the committee?

**Mr. David Law:** Simply put, I would think it's important for the committee to examine the profile of federally regulated businesses to see that they're not all gigantic corporations that appear to be immune to economic pain. That's all. There are many smaller employers in this zone. Our constituency of human resource professionals—30,000 or more across the country—work in every conceivable kind of workplace, not just federally regulated ones, of course.

I think it's important to recognize that this kind of legislation will have a different effect on the small and medium-sized enterprises than on the larger ones that may be able to pool capital to sustain a long period without business. That's what we're talking about here—no operations, no services, no delivery of product through the means of alternative workers. It is essentially paralyzing them.

• (1705)

**Ms. Ruby Dhalla:** I believe Mr. Hogue touched upon this as well. I wonder if you could expand on it and if Mr. Patterson could add his particular comments.

We all know the importance of foreign investment to ensure that we as a country can compete with some of the emerging markets. Have you done any particular research in terms of the differentiation of foreign investment in British Columbia and in Quebec versus other parts of the country and the type of impact this would have on foreign investment?

[*Translation*]

**Mr. Bernard Hogue:** I do not have the figures here, unfortunately, because I did not bring them.

Yes, in Quebec last year, the share of investment, proportionately speaking, was below the level of investment in the rest of Canada. So in Quebec, we are suffering from too much labour legislation at different levels, and it is clear to us and to our members that it more difficult to obtain foreign investment because of a high unionization rate and inflexible legislation that scares away foreign investors.

[*English*]

**Mr. David Stewart-Patterson:** If I may, I think the committee has already been presented with any number of studies that have addressed the question from an academic point of view. I think I'd come at it from a very practical point of view. Simply, if you tilt the balance it will have an impact on the margins, things like cost, and because of the profiles of some of these sectors, it may have a reputational impact on foreign investment in particular.

The point is, can the economy grow well even with such a law in place? Sure, but it doesn't mean the economic cycle is dead. The question is whether this legislation is going to help the economy grow faster when it's going well. Is it going to make recessions less painful when those come along? Even though we haven't had one in 15 years, I'm sure we will at some point. Again, is this change in the balance something that's going to make growth stronger and recessions less serious? Is it going to help attract investment, or is it going to discourage investment? I think from a directional point of view, the answer is pretty obvious. You make labour markets more rigid, you make things more expensive, you increase risks, and people are more likely to stay away. What percentage? As I said, you can look at any number of academics and get answers to that, but when we're looking at a piece of legislation, the question is whether it is a mistake or not.

**Ms. Ruby Dhalla:** Just before the chair drops his gavel, can you very quickly tell me what some of your suggestions would be if we were to make changes to this particular piece of legislation?

**Mr. David Stewart-Patterson:** I think I addressed that question in an earlier round, to Mr. Silva if I'm not mistaken. I don't see any way to finesse a little amendment to somehow make this neutral or to find the right balance. I think I would agree with my colleagues here that we've carefully worked out a balance in this country and there's no compelling reason that we should be shifting that balance.

**Mr. David Law:** I agree. I echo that.

I'd like to offer one point to the concerns addressed on my right here, which is that aside from the business impacts, which you've heard a great deal about from this group, the point of the law is to stop people from working. It prevents bargaining unit members from re-entering the workplace during a strike. Essentially, their union will tell them not to work. It will create greater conflicts between unions and workers. It will prevent people from going back to work. It will prevent replacement workers from going back to work. That can't be perceived as a positive economic outcome. I'm told repeatedly that it prolongs strikes, notwithstanding what some people believe. That's also tremendously detrimental to working people it's supposed to serve.

**The Chair:** Thank you, Mr. Law, and thank you, Ms. Dhalla.

We're going to move to our last questioner today. Mr. Lake, you have five minutes, please.

**Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC):** Thank you all for coming in today. I do appreciate you guys getting down here, and I'm glad we got you in.

Actually, I've heard, to your credit, some different arguments than I've heard from some of the other witnesses that are against this legislation.

One of the things I sense from you is a little bit of frustration, perhaps, maybe surprise—I share those sentiments—that a piece of legislation like this has even gotten this far. I think it's pretty extreme legislation. I think a lot of the people we've heard talk have said the same thing. You might be surprised to learn that some of those concerns are shared by a fellow named Mr. Sydney Green in an editorial he wrote in the *Winnipeg Free Press*. Sydney Green is a former Manitoba cabinet minister, actually an NDP cabinet minister, in Manitoba.

Mr. Law, in particular, some of the comments you made caused me to reflect a little bit on this article. I'm going to read a little bit from it and get your comments.

He starts off:

The election of a minority government has resulted in a curious anomaly. The combined opposition is in a position where it believes that it can pass legislation in direct conflict with the position of the government. Indeed, the combined opposition, simply to flex its muscles, has given second reading to legislation that no party seeking to become the federal government has ever included as a plank in an election platform.

He goes on to say, at a different point:

When free collective bargaining is the rule, employees have the right to withdraw their services. But when they do so, they run the risk of being unsuccessful. The ultimate risk is the risk of losing one's job. The employers had the right to resist union demands and to carry on their business. But in doing so, they ran the risk of losing. The ultimate risk was being put out of business.

It sounds similar to what you were saying today. He says, "This balance of ultimate risks was a most important feature. It demanded responsibility on both sides. It was the cornerstone and safety valve of the free collective bargaining process".

When discussing the history of labour legislation, Mr. Green says, "This so-called anti-scab legislation is the most outrageous demand yet, and lowers the coffin into the grave."

This is an NDP cabinet minister from Manitoba speaking.

When discussing the long-term implications of Bill C-257, Mr. Green points out that:

The implication of legislative interference, once the principle of non-interference is abandoned, is boundless. In answer to anti-scab legislation, employers can logically demand that during a lockout, employees locked out cannot seek other employment.

That's exactly what you were saying, I think, Mr. Law.

Actually, I'm going to stop there. I want to ask any of you, but particularly Mr. Law to start, if you want to comment on that.

• (1710)

**Mr. David Law:** Well, I haven't read the article, but I could say this. We've had minority parliaments before. The truth of the matter

is, the way it works, as I understand it, is that the opposition parties, if they wish to combine and pass legislation, unless it's a confidence measure, can do so. That's their right. It's perfectly their right to do so. So the question becomes how they exercise that authority, as any majority in the House would, however it's constituted.

We've had minority parliaments before. David Lewis held the balance of power in the House of Commons during some very tumultuous times in labour relations. We don't have federal anti-replacement-worker legislation emanating back to the time when he held the balance of power. That tells me something. We look at the prairie provinces, where we've had New Democratic governments. They haven't adopted it.

We should look at the true effects of this, not just on the business community, which is here before you today and speaking on behalf of their constituents, but in terms of the people who you seek to serve with it. I think that's the issue. You may think that disingenuous, and it might be, but the truth of the matter is, it deserves a balanced approach. This is not how we do labour law in this country. It is not how we negotiate contracts, and Mr. Green makes that point.

Is it the coffin in the grave? You know, rhetoric gets a little excited, doesn't it, sometimes in these things? But this isn't how we bargain. Labour law shouldn't be a political game. And I'm not suggesting it's purely that. There are sincere concerns expressed about workplace violence on the pickets lines. Those are real issues, and it's disgusting that those things occur, and the people responsible for them, on all sides, should be held accountable for them.

This is not the instrument to correct that. That's our issue. And a lot of other parties, New Democrats, who've had the opportunity to hold the balance of power or to be in government, have not adopted this measure, because they understand how labour law works. In fact, the New Democrats, for what it's worth, usually have more experience with labour relations issues than a lot of other parliamentarians, given some of the work they've done and their own histories. So they get it. So I would say, look at that experience and look at those examples, sir.

**Mr. Mike Lake:** It is interesting to point out that the New Democratic governments right now in Saskatchewan and Manitoba don't have this legislation.

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

I want to thank the witnesses again for being here today. I realize how important it is to each one of your industries. As I said, we passed a resolution before Christmas to hear some of the witnesses who didn't get a chance beforehand. I know Mr. Green was going to be one of those to testify, but his schedule would not work out. There are a few others on the other side whose schedules didn't work out either.

I want to once again thank you very much for being here. This is an important issue, and we still have some work to do.

We are going to suspend for a few minutes and then we have some committee business to take care of before we adjourn. Thank you once again.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1715)

**The Chair:** Could the members go back to their seats so that we can finish up the committee business, please?

The subcommittee met today. It was a good meeting. We were unanimous on the report in terms of what you see before us, which is proposing a work schedule over the next couple of weeks and months.

Could someone present a motion to carry the third report?

It is moved by Ms. Dhalla and seconded by Mr. Lessard.

Go ahead, Ms. Yelich.

**Mrs. Lynne Yelich (Blackstrap, CPC):** Could I just mention that if we do need a little extra time, we may be allowed to have it? Other than that, it's a great schedule.

**The Chair:** Okay.

**Ms. Ruby Dhalla:** What was that? We'd have a little extra time for what?

**The Chair:** It would be for any of the legislative bills that we have to go through, Bill C-36 and Bill C-303. We have a few days set aside if they should need more days.

**Ms. Libby Davies:** Looking at this schedule, I feel it's acceptable. I believe the government is quite interested in getting Bill C-36 through, and I think there is even all-party support. It's behind Bill C-257. I just want to have an assurance that if we adopt this schedule for Bill C-257, there are no witnesses other than those who are scheduled.

**The Chair:** That's correct.

**Ms. Libby Davies:** That's correct, so we have put February 13 as a technical briefing and then two days for clause-by-clause consideration. I would like to have an understanding that if it's necessary to go to longer hours, to do that. I would like to see it done by February 15, because I think even the government members should be interested in that, given that Bill C-36 is behind it.

**The Chair:** The way it stands is if we adopt this, we are going to have to make a motion to change it, so we're adopting it with the understanding that we'll be done on February 15.

Ms. Yelich's point was that if we need to look at some of the other legislation, we may need to, but that still is going to have to be addressed at the time.

Is there any further discussion? As there is none, I call the question.

(Motion agreed to [See *Minutes of Proceedings*])

**The Chair:** The meeting is adjourned.

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

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

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