



House of Commons
CANADA

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

HUMA • NUMBER 054 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, February 13, 2007

—
Chair

Mr. Dean Allison

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

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

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

Tuesday, February 13, 2007

• (1535)

[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 (replacement workers), the committee will now resume its work on the study.

I would like to take this time to welcome the Department of Human Resources and Social Development. We have the Deputy Minister of Labour; the Director General, Labour Program, Federal Mediation and Conciliation Service; and some legislative help as well as senior counsel. Usually you'd have seven minutes each, but because the reason for the meeting today is to have you here, you can take the time you need.

Mr. Sheikh.

Mr. Munir Sheikh (Deputy Minister of Labour, Department of Human Resources and Social Development): Mr. Chair, let me first of all thank you for inviting me and my team here today to deal with some fairly important issues on replacement workers. We, the officials, are here to provide you with facts. Of course it is up to the government and Parliament to make decisions of a policy nature.

As you mentioned, I have my colleagues here with me from the Federal Mediation and Conciliation Service who deal with issues related to replacement workers, and I have a legal counsel from the Department of Justice who works with us in the labour program. Today with your permission, Mr. Chair, we have submitted two documents. These should be available to all by now.

The first document, Mr. Chair, is an update of the "List of Complaints Filed with the Canada Industrial Relations Board Illegal Use of Replacement Workers". You may recall that a version of this document was submitted earlier, and this is an update to that document, bringing it into line with the most recent information we have.

The second document you'll find in front of you that we are submitting, and actually I would like to present the document to you today, is entitled "Key Observations Regarding the Effect of Replacement Worker Legislation on Workers". This second document uses the data that the labour program has been collecting for a very long time.

Let me just mention three observations on the data that we are using. First, these data are collected on the same quality basis as data

collected by Statistics Canada. Second, these data are used widely. Indeed, if I can mention it, as of April 1, 2007, the salaries of members of Parliament will be adjusted based on the data that we produced on wage settlements. Third, the data we produced on the key variables that I'm going to take you through are quite similar to the data that provinces produce for their own jurisdictions. Indeed I'm going to be comparing some information in these tables, federal compared with provincial. Our data are very similar, for example, to the data that Quebec produces. I can explain the technical differences between the two, but for all effective purposes they're basically the same.

What is the main message that comes out of the document I've given you? The main message is that we, the analysts, are not able to detect any positive impact of anti-scab legislation on workers; at least that is not what these data show. I'd like to take you through these tables and explain to you why we come to that conclusion. The data are in front of everybody, and you can draw your own conclusions from them.

On page 2 of the document called "Key Observations", we have table 1. There are some shaded yellow boxes in that table. As an example, if you look at the British Columbia number, which is 0.04, this is the number of work stoppages per 10,000 employees for a particular year. In 2005 there were 0.04 work stoppages in British Columbia. This is of course a province that does not allow the use of replacement workers. So the number is pretty low, which is a good thing.

If you compare that number, however, with that of Quebec, you find that Quebec's number is more than six times the number for B. C. If you compare the B.C. number with that of Ontario, you find it is three times larger than British Columbia's number.

My conclusion in looking at these data is that I really cannot relate the anti-scab legislation to the number of work stoppages. There is simply no relationship between those two variables.

Table 2, which is on page 3, is a table about the average duration of work stoppages—how many days a work stoppage lasts. Again let me do the same thing. In this table, Mr. Chair, to avoid the cycles that are normal in any economic data, we have taken averages to get a more basic trend in the data.

Let's take the average for 1975 to 1977 as an example and look at British Columbia. The average duration of a work stoppage over that three-year period in British Columbia was 27 days. It was 37 days in Quebec—a bigger number than in British Columbia, and as you know, both have anti-scab legislation. Ontario's average was 28—before the legislation in both provinces—which was about the same as B.C. but lower than Quebec.

Let's go to the bottom of this table. For the period 2003 to 2005—for British Columbia and Quebec this was a post-legislation period—B.C. had 28.9 days, Ontario had 38.1, which of course is higher and Ontario doesn't have that legislation, but Quebec had 46.6. Looking at the average for those three years, if you asked me to conclude what the relationship was between those two variables, my conclusion would be none.

The second thing we can do in this table is go from the historical period pre-legislation to now and see what this legislation does. Looking at the Quebec numbers, the average duration of work stoppage went from 37 days in the three-year period before 1977 to 46.6, an increase of 10 days. The legislation didn't seem to have any effect in reducing the average duration of work stoppage. It went up.

The same is true for Ontario. It went up from 28 days pre-1977 to 38, about the same increase as in Quebec. In B.C., on the other hand, there was not much of an increase—from 27 to 29—but if you look at the average for B.C. in the middle of the page, which is again the pre-change issue since the B.C. legislation came in 1993, you will see that there was a drop from 44 to 29.

The simple message from these numbers again is that I really can't find a link between the average duration of work stoppage and anti-scab legislation.

I take you now to page 5, which is a third variable of interest to us. This is the number of person-days not worked. If we look at the bottom of the page, for B.C. the number is 59, which is the lowest number on the table. For Ontario, which doesn't have that legislation, the number is 81, which is higher than B.C.'s number. But the Quebec number is 132.

Again I can't establish a link between this type of legislation and the number of person-days not worked.

The most important variable, as shown on page 7, was in the wage gains of workers, based on whether or not a law of this type was available.

The federal wage gain in 2005 was 2.7%. We don't have this legislation. The British Columbia wage gain was 2.3%, lower than the federal wage gain. Quebec had a gain of 2.4%, again lower than the federal wage gain. But I'm not going to conclude that if you don't have this law workers get bigger benefits, because that certainly is not true. The Ontario number was 2.3% as well, which is the lowest number in the table for wage gain.

So I cannot draw a conclusion that this type of legislation can help workers achieve larger wage gains.

I have mentioned the four variables of wage adjustments, the number of work days lost, the average duration of strike, and the number of work stoppages. My data are quite credible, have been used by many analysts, and are of the same quality as Statistics

Canada's data. If we use the averages over these periods, we cannot establish a link between the legislation and the variables we are looking at.

So that is the conclusion we draw from these data. Of course I can use these data to draw other conclusions, but I would argue that those are not reasonable conclusions based on the use of data. I can give you many examples, just looking at these tables, of how that can happen. Some people have tried to do that, but I would suggest that is really not very scientific.

● (1540)

That's all I have to say. We're here to answer your questions on these tables or other questions of fact and analysis that we can deal with, as I said, in order for the minister and the government of Parliament to come a decision on policy.

Thank you, Mr. Chair.

● (1545)

The Chair: Thank you very much.

We're now going to move to our first round of seven minutes for questions and answers. We're going to start with the opposition, the Liberal Party.

Mr. Silva, for seven minutes, please.

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

On section 87.4 of the Canada Labour Code, there's a reference in this bill to that particular legislation. But there's been a concern raised by many other people, witnesses I've heard, on the whole issue of essential services. Can you comment on these concerns? Are essential services protected under section 87.4 of the Labour Code?

Mr. Munir Sheikh: Thank you.

Mr. Chair, as I said, I'll deal with issues of fact. There are issues of policy in that question that I would not want to deal with.

Let me explain that in the Canada Labour Code the reference to essential services is essential services in a very narrow sense. The services defined in the code only relate to health and safety.

The reason there's such a narrow focus on essential services is that the essential services provisions of the code work hand in hand with the replacement workers provision. The two go together. Because businesses are allowed to use replacement workers, the code did not have to be very prescriptive on what essential services are, and it has suggested mechanisms in the code on how to deal with the essential services issue. The code quite explicitly states that management and unions should sit together and define what essential services are in their particular areas.

I'll give you an example. On the CN strike that is happening right now, effective February 10, the two parties jointly determined that the commuter rail service in Toronto and Montreal will not be shut down. The service is still running, and it's only the freight service that has been hit by the strike.

If the two parties, Mr. Chair, cannot agree on which services should continue, they would apply to the Canada Industrial Relations Board, and the board would come to a decision on what it would consider to be essential. It is what both parties would be expected to follow.

To summarize my answer, since the two provisions in the code work hand in hand, the provisions for essential services are very limited. If, for the sake of argument, one of the provisions of the code were to change, then there would of course be a huge imbalance between the two.

For example, if Bill C-257 is made into law, it would mean the essential services provision in the Canada Labour Code would not be sufficient. If it is not dealt with, then I would speculate that the Canada Industrial Relations Board would find it has to deal with a workload that is significantly more than is realistic at the present time. The board may not be able to handle that.

Again, I think the two things need to be looked at together.

Mr. Mario Silva: Maybe you could help this committee. You spoke about the fact of it not being sufficient. There have been arguments that the essential service provision under section 87.4 is the same as, for example, what is in B.C. and what's in Quebec. I'm hearing from you that it's probably not the case. Is that what you're saying?

Mr. Munir Sheikh: That's my understanding. In effect, if I understand it, in the Quebec legislation there's considerable detail as to what essential services are, which are considerably more—a lot more—than what we have in the federal code.

Mr. Mario Silva: But the essential service provision in Quebec is in relation to public service. It's basically all the ambulances and hospitals, and it's not related to private enterprise.

Mr. Munir Sheikh: I'll let my colleague provide further details on the Quebec legislation, but let me make what I think is a fairly important point, and that is reflected in the reality of the Canada Labour Code.

As long as they're related to health and safety, there are of course many more services that are essential at the provincial level than at the federal level because of the nature of the federally regulated sectors. The unique thing about the federally regulated sectors is that they provide a national foundation on which the rest of the economy functions. Their role is not as much about health and safety as it is about the importance of these sectors to the overall Canadian economy, a role that I would argue is somewhat different from the provincial role. The provincial role, of course, relates to economies within a province, whereas the federal role is for sectors that would affect everybody in every province. In that sense, some people have used different terminology for what the federal government does and have said that it is critical, not essential—"essential" being the word used to describe health- and safety-related issues.

So I would suggest that a really important issue in this context is that for an economy that deals with the entire scope of the country—and we're dealing here with economic issues that affect everyone, not just those in one province—there should be some discussion of what role critical services play and how they should be dealt with.

• (1550)

Mr. Mario Silva: Are you suggesting, then, that it would be helpful to add the words "essential services" or to broaden the definition? Would that be helpful to clarify things?

Mr. Munir Sheikh: Again, the word that has been used—helpful—is not what I can really deal with. What I'm saying is that in the existing code, the provision on essential services is linked directly to the question of replacement workers. If that provision on the replacement workers were to be changed, then there'd be an imbalance that would need to be fixed.

How far should Parliament go to fix that balance is really up to Parliament, but there will be an imbalance. It's really not for me to decide or opine on how far that change should go, but the existing provisions would not be very practical.

Mr. Mario Silva: I just wanted to know something. When you talk about imbalance, is that your opinion, or is that a legal opinion from the department?

Mr. Munir Sheikh: It is an opinion based on what is meant by balance in the context of the code, and on whether or not that definition of balance would be disturbed.

The definition of balance was used in pulling the provisions of the code together, and the Sims report really describes it and discusses it in detail. To determine if there is balance, you must look at whether or not the law would create equal incentives for both parties to come to a reasonable solution.

Again, I can use the CN example. In the current strike, both parties face financial challenges. The workers, of course, face financial challenges because they lose income as long as they are on strike. According to a union spokesperson, CN is now running at 25% capacity, which of course means that CN management and business are also facing financial challenges. So there is the balance in the code to encourage both parties to come to a view on what a reasonable settlement would be. If you change that balance, then of course the incentives will change.

I'm not here to suggest whether or not that new balance is appropriate. All I'm suggesting is that the existing balance, in which there are reasonable incentives on both sides to come to a view as to what a reasonable settlement would be, would be disturbed, and then somebody would have to find what new balance one would need or whether one needed a new balance. As I said before, that is really a policy question.

The Chair: Thank you, Mr. Silva.

Now we're going to move to the Bloc, with seven minutes for Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chair.

Thank you very much, ladies and gentlemen, for coming to enlighten us further on the bill before us.

I'm pleased to meet you, but I didn't think you were going to talk to us about the document that was produced on October 24, the day before the vote, which Minister Blackburn had distributed to all members only a few hours before the vote on second reading.

When I received that document, I was quite surprised because I had the impression that the statistics it contained were not correct. I've told this committee on a number of occasions: it's a surprise when you compare work stoppages in Quebec and Ontario. It's like comparing tomatoes and carrots: they're both good, but the comparison isn't fair and doesn't give an accurate idea of the situation.

You have to compare the number of person-days lost by workers governed by the Quebec Labour Code and those lost by workers governed by the Canada Labour Code. If there are figures that should be compared, it's those ones. When you compare Ontario, British Columbia and Quebec, a number of other factors that are not taken into consideration influence the figures.

I'm thinking, among other things, of the number of unionized workers. It is a well-known fact that the percentage of unionized workers is much higher in Quebec than in Canada or in any other province. So you shouldn't compare workers who are governed by the Quebec Labour Code with those governed by the Canada Labour Code.

On its Web site, the Government of Quebec has posted some good tables on the subject, which are available and which I could distribute to you, if Mr. Chair gave me the permission. We have the figures on labour disputes in Quebec involving workers under provincial jurisdiction and those under federal jurisdiction between 1989 and 2004. You realize there are far fewer workers under federal jurisdiction — they represent eight percent or less of the total labour force — but that the number of person-days lost is generally, on average, much greater than eight percent in their case. For example, between 1989 and 2004, the average number of person-days lost by those workers represented 18.8 percent of the total number, whereas they represent less than eight percent of the total labour force. These are figures that talk, that are accurate and that are spread over a long period.

It is true that there are years in which the number of person-days lost is less than eight percent, but it is also true that, in some years, that number is much higher. I am thinking, among others, of 2002, when the percentage was 47.8 percent, and the last average reported, which is 18 percent. I will be extremely pleased to submit those figures to you.

Perhaps you haven't observed the direct impact of passage of the anti-strike breaking legislation in Quebec in 1977 on the number of work stoppages, but, when you look at the figures in Quebec, you see that, in 1976 and 1977, there were respectively 293 and 276 strikes. The last figure I have is 96 for 1995, and I see that you've come up with the figure of 76 for 2005.

That may not be the most interesting statistic, but it confirms that the anti-strike breaking legislation resulted in social peace in Quebec. Everyone says it: the unions and even the employers have

been saying it for years. We moreover found no real criticism of the strike breaking legislation in any of the briefs by the Conseil du patronat du Québec.

Having said that, I'll allow you some time to comment on the figures I've given you, Mr. Sheikh.

● (1555)

[*English*]

Mr. Munir Sheikh: I'll make two observations, Mr. Chair.

The first is that all the factors you have mentioned can have a bearing on the impact of such legislation and the variables we're all interested in. There is a simple way of looking at this issue, which is what I've done. And there's a complicated way of looking at this issue, where you do economic studies—I've done many in my life—and come to a resolution of precisely what the impact of such legislation is. That is not what I've done in these tables.

If I can make a reference to page 4 of the document we gave you, these are not our studies. We don't know why these studies were undertaken and who funded them or whatever. All we know is that we were not the ones who asked for these studies. Most of these studies overwhelmingly show that the simple conclusion I have drawn stands. That conclusion doesn't get overturned.

I would suggest maybe that should be looked upon—

● (1600)

[*Translation*]

Mrs. Carole Lavallée: Pardon me, Mr. Sheikh, but my time is limited.

If I may interrupt you for a few seconds, I will say that most of the studies that you cite were conducted by renowned U.S. academics. Moreover, they are very well known and we know them particularly well because they are usually the advisors of major American employers. They advise those employers to be extremely tough on workers. They are right-wing people. One of the authors you refer to, John Budd, is known for his right-wing positions and his advice to employers, who always oppose workers in a very tough manner. So you'll allow me to express a few doubts about the other authors as a whole. You cite them, but we don't know how their studies are conducted.

As I said earlier, you have to compare apples with apples. In Quebec, you have to look at the person-days lost and compare workers governed by the Provincial Labour Code with those governed by the Canada Labour Code.

Pardon me for interrupting you.

[*English*]

The Chair: Mr. Sheikh, please give a quick response. We're out of time, but go ahead with an answer.

Mr. Munir Sheikh: All I can say is that we have our own data. Those data are quite credible. We have looked at the data, we've analyzed them in whatever way we can, and we are simply not able to establish a link. I'm not saying there is a positive link or a negative link; we simply cannot establish a link among the data.

The Chair: Thank you very much.

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

Ms. Libby Davies (Vancouver East, NDP): Thank you very much.

Thank you to the officials for coming today. I'd like to pick up on a couple of points you're making.

You focused a lot on numbers, and you seem to be coming to a conclusion, or you're wanting us to believe a conclusion, that your numbers show that this bill banning the use of replacement workers hasn't had an impact. I think it's really important to note that numbers alone don't tell the story. You have to look at the labour relations climate in terms of what is happening at any particular time. I would draw your attention, and the attention of members of the committee, to your own tables that you presented today. I think it's very clear on page 5, in table 3, that in Quebec, when you look at the number of person-days not worked, you can see a very high figure—four million plus—in 1977, prior to the legislation coming into effect in Quebec, and then you can see a very sharp drop-off after that, going down to one million. Then there are some figures below that.

It seems to me that if you want to just argue numbers, you could use this table equally the other way around. Unfortunately you don't show the B.C. situation, because the B.C. legislation came into effect in 1993, so we actually can't do the comparison there.

The other thing I would add is that I think it's very clear that in Quebec there was a wave of work stoppages, particularly in 2005, because there were a lot of conflicts because of a major restructuring by the Quebec government that went on. So that produced a very different kind of labour relations climate, and I think you have to put that in the mix.

So I don't share your conclusion that this is just based on numbers alone. I think these numbers can be looked at in different ways, particularly in the table I've just pointed out. You can comment on that if you want.

The second point I'd like to raise and get you to respond to is that you seem to be saying that section 87.4 in the Canada Labour Code, which deals with maintenance of services, which we all understand to be the provision that deals with essential services, is very narrow. I think you said that in your comments. And it is correct that section 87.4 says "to prevent an immediate and serious danger to the safety or health of the public".

But let's be very clear. It's very similar in Quebec. And in B.C., the legislation says "safety or health" and I think they use the word "welfare" as well. Nevertheless, we are dealing with similar provisions. So I'm not aware that the narrowness of the scope of those pieces of legislation has in any way impeded parties from being able to declare what are essential services.

I would point out further that the CIRB itself, in a ruling dealing with the Montreal airport—its own ruling—raises the question of what is meant by the safety and health of the public, and the board itself is saying that in the board's view, the code gives it plenty of leeway by refraining from imposing any definitions whatsoever, and then it goes on beyond that. So even the board itself, in its own rulings, seems to have been quite satisfied that it has the scope to deal with the provision of essential services as defined in the code.

Finally, I would like your officials to walk us through section 87.4 of the Labour Code. We have heard so much conflicting testimony—that there are no provisions, that we can't deal with essential services, that it's not clear, that it's not fair—and yet I've read section 87.4, and it's very clear to me that the employer or the union or the minister can actually request the board to provide an intervention and define what those essential services are.

But rather than having it come from me, I would like your officials to walk us through how section 87.4 of the Labour Code works and who can do what in terms of defining what those essential services are.

• (1605)

Mr. Munir Sheikh: On the question of numbers, we observed the Quebec situation going from 4.4 million to a very small number. I think you can see the same thing for other jurisdictions as well. Indeed, for B.C. the 1992 number is 545,620, and it went down to 76,820 in 2005. You can observe this is a downward trend for all jurisdictions over time.

On the question of essential services, the point I was making is that the scope of essential services defined in the code in relation to federal sectors is very narrow. For example, look at our provincial economy, which has responsibility for health, safety, education, and what not. If you take health and safety, and that is the only way to define essential services, then of course you're going to have a much larger part of the provincial economy that would come under their jurisdiction.

For the federal government, which is national in scope and really is the foundation on which the rest of the economy works—analysts use the word "critical" or "essential"—the issue that I think needs to be discussed is what essential services are in the context of shutting down critical national services and the whole country comes to a standstill.

Ms. Libby Davies: Deputy Minister, do you not agree that in your board's own opinion they have enough leeway under the code and through the decisions they have made to make that determination? They're already doing it. Do you agree with that?

Mr. Munir Sheikh: I totally agree with that. In fact, that was my second point. The board has all the jurisdiction it needs to define essential services in the context of the current replacement workers legislation. The fact that the code has given authority to the parties to determine what essential services effectively are means you don't really need a huge law or huge intervention from the board. Once you change the replacement workers legislation, then that balance I was talking about, the ability of the board to come to a decision, comes into question.

Ms. Libby Davies: The question of replacement workers is a completely separate issue. We are debating whether without replacement workers there is adequate provision through this process for the parties to agree, on their own or with the assistance of the board or through the intervention of the minister, that essential services can be established. That's a very straightforward question.

I would like you to respond, whether you think there is an adequate provision in the code to establish that now.

•(1610)

Mr. Munir Sheikh: I think I've answered that question.

The Chair: That's all the time we have, but if you want to finish up your thought, Mr. Sheikh, go ahead.

Mr. Munir Sheikh: I've answered that question before. The view of the Sims report was quite clearly that the two work together. If you change one, you put the other out of—

Ms. Libby Davies: That's not what I'm asking you.

The Chair: That's all the time. We'll have to pick that up in the next round.

Mr. Lake, seven minutes, please.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you.

Deputy Minister Sheikh, we've heard testimony that bans on replacement workers are widely used throughout the world. Can you tell us if there are any countries that have bans on replacement workers?

Mr. Munir Sheikh: Well, this is not an easy thing to do. As I'm sure you'd appreciate, collecting data internationally for countries whose legal systems are quite different from ours is not a small thing.

We've tried to make some progress on that front. We have come across information put together by the Organisation for Economic Co-operation and Development and the International Labour Organization. We have been able to get hold of some data. Of course we don't have information for all of the approximately 162 countries.

Based on the information we have been able to get, we put countries into three categories: countries that ban the use of replacement workers; countries that allow the use of replacement workers in one form or another, as there are differences in degrees; and countries for which we don't really have any information.

If I can summarize the information that we have, as I said, it's incomplete.

In the first group, countries that ban the use of replacement workers, I can mention countries like Korea, Mexico, Chile, Cambodia, Botswana, Tanzania, and the Republic of Montenegro. Those are the seven countries we have found where the use of replacement workers is banned. As you can understand, they have disallowed that.

The countries where replacement workers are allowed in one form or another would be France, the U.K., Belgium, the U.S., Australia, Germany, Slovenia, Greece, Madagascar, and Namibia. It's not a very long list, but it is all we have been able to find.

I would put the remaining 140-odd countries on the list where we really cannot come to a determination on whether or not replacement workers are allowed. For most of the western countries, the answer is that replacement workers are allowed in one form or another.

Mr. Mike Lake: Thank you.

I want to pick up on something Ms. Davies was talking about. I thought she made a good point. She said numbers don't tell the

whole story and you have to look at the entire labour relations climate. It seems to me that the current labour relations climate post-Sims is quite positive. Can you comment on how the implementation of the recommendations made in the Sims report has changed the environment here in Canada?

Mr. Munir Sheikh: I think one simple way to determine how the introduction of this new balance in the Sims report has led to the climate between the two parties is based on two sets of observations.

One is that since the new law has come into existence, Parliament has not been asked to pass back-to-work legislation. To me, it is an indication that workers have really been quite reasonable in their demands for wages and other factors. They have shown enough flexibility to come to a conclusion in which Parliament didn't really have to act.

On the other side of the coin, you don't want legislation to affect only one party's behaviour. The other side of the coin, of course, is employers. If you look at the decisions that the Canada Industrial Relations Board have given, my colleagues can correct me, but my understanding is that to date, since the new law has come into existence, the board has not found any complaint where they thought the complaint against the employer was justified.

Both parties have shown a reasonableness to come to a conclusion. and as a result, since the new law, I think the labour relations climate is really quite positive. We haven't seen anything untoward so far.

•(1615)

Mr. Mike Lake: Further to that, it seems to be working pretty well, and obviously no legislation is absolutely perfect.

In your experience, when you're dealing with making changes to something as complex as the Labour Code, I'd like you to speak to the appropriate way to approach making changes to something like the Labour Code.

Mr. Munir Sheikh: Our approach is fairly standard. We try to follow it in every circumstance. I can give you the example that I am currently familiar with, and that is the revisions to part III of the Canada Labour Code. Part III of the code has not been revised for 40 years. It's a very substantial piece of legislation.

Three years ago, the previous government set up a commission to study the issue. Professor Arthurs from Osgoode Hall Law School was given the task of recommending to the government what changes should be made. The professor took three years to study part III and presented his report to the minister in October last year.

The minister has come to the view that he needs to discuss these recommendations with these stakeholders, because it is not appropriate in the area of labour legislation to act in a way that doesn't have the consensus of both parties. So the minister has gone on a cross-country tour to hear from employers, unions, and non-unionized workers what their reaction is to the recommendation. The minister has found so far that there are certain areas where all three parties totally disagree with the recommendations, there are some on which they all agree, and of course there are some where there is a difference of views.

It is not clear to us now how much more time it's going to take to have a legislative package if the government decides to go down that path. It takes a fairly substantial amount of time to make sure they can put something together that is very precise, and see whether or not our stakeholders agree with that.

Mr. Mike Lake: Right—a very careful approach.

I'm going to shift gears for a second. One of the things that concern me is the issue of violence on picket lines. Several people in my riding, some good friends of mine, are members of unions. None of them would condone any kind of violence on the picket lines if they were involved in those kinds of situations.

I want you to elaborate a little on how you take violence into account in the issue of replacement workers.

Mr. Munir Sheikh: I find that really tough. First of all, we don't collect any statistics on violence for the simple reason that it's really hard to define what violence is. If you don't know what violence is, it's not easy to get data on it. That's one part of it.

If I can accept personal failure on my account, I don't know the answer to a question that I keep asking myself. As a policy analyst, if I have developed a good policy—and you can define that good policy whatever way you want—and somebody tells me that a group of people doesn't like that policy, will engage in violence, and I have to change that policy, I ask myself how would I react to that. I don't know what the answer to the question is, but it really bothers me.

The Chair: Thank you, Mr. Lake.

Ms. Dhalla, please.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Thank you very much to the witnesses once again for being here today to provide us with some information.

I want to touch upon two particular questions. One has already been raised, but I need further clarification. You mentioned, in regard to essential services during a period of strike, that an application would have to be made to the Canada Industrial Relations Board. How long does that process take at present?

Mr. Munir Sheikh: The board has been given a variety of issues to deal with. Sometimes it takes the board less time, sometimes more. On substantive issues—not something like an application before the board on the CN strike; whether that was legal or illegal, the board would probably not take too long to come to that decision—the board has come to a decision in about three months, and on fairly complicated issues they've sometimes taken two-and-a-half years.

• (1620)

Ms. Ruby Dhalla: What would happen in a process in a strike right now? My concern is essential services, and a number of people in my own constituency have come to see me. Regardless of what they believe about the principle of the legislation itself, let's say this is enacted and it goes through. What would happen if there were essential services that were not being addressed, and application had to be made to the Industrial Relations Board? Would they take three months to determine whether a particular service was critical or not?

Mr. Munir Sheikh: The answer to that question simply is that I don't know. It really depends on the nature of the issue. I can see

them coming to a decision on an essential service fairly quickly, or I can see them taking a long time because it's not quite clear.

Ms. Ruby Dhalla: How many people sit on the Industrial Relations Board right now?

Mr. Munir Sheikh: When the board is full, there are about seven people on the board.

Ms. Ruby Dhalla: There are about seven people.

Taking a look at the bill itself, Bill C-257, and going on to proposed paragraph 94(2.2)(a), I've had a number of people come forward with a concern in regard to where it states “a person employed as a manager, superintendent or foreman or as a representative of the employer in employer-employee relations”, in that they are the only individuals who would be allowed to work during a particular lockout or strike. Would this actually prevent individuals who are non-unionized employees, who are managers, to go in and provide replacement services?

Mr. Munir Sheikh: Let me ask my expert to answer that question.

Ms. Elizabeth MacPherson (Director General, Labour Program, Federal Mediation and Conciliation Service, Department of Human Resources and Social Development): I'm not sure I can give an interpretation.

Ms. Ruby Dhalla: As an example, the Canadian Pacific Railway has been forwarding some of their issues and concerns, and rightfully so. It was an important issue that both they and other organizations have brought up.

Mr. Munir Sheikh: My expert tells me that she's not quite clear on what would be or would not be allowed. We really haven't come to those kinds of conclusions on the Bill C-257 provisions.

Ms. Ruby Dhalla: So I take it that it could be left open for interpretation.

Ms. Elizabeth MacPherson: It would be up to the Canada Industrial Relations Board to interpret the law.

Ms. Ruby Dhalla: The other question is for Mr. Leduc, who is, I take it, the legal counsel for legal services in employment insurance. Have you done a legal opinion in terms of the determination of essential services?

Mr. Luc Leduc (Senior Counsel, Legal Services, Employment Insurance, Department of Human Resources and Skills Development): No, we have not.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): Let me ask this question, relative to what Ms. Dhalla was asking about.

I want a law that bans replacement workers, but I don't want it if it's going to mean a shutdown of essential services or if it is entirely punitive to companies using employees who are not members of the bargaining unit to do the work. She asked you about somebody doing work in another area or establishment. Specifically, if Aliant has a strike in Atlantic Canada, under this legislation, would it be your view that they could use a manager in Saint John to work in a call centre in Moncton?

Mr. Munir Sheikh: I don't have the answer to that question.

Mr. Michael Savage: Do you have anybody who might?

Mr. Munir Sheikh: Can you answer the question?

Ms. Elizabeth MacPherson: Again, the definitive answer would have to be given by the Canada Industrial Relations Board, based on the facts of the case as put forward in front of them, and in interpreting whatever act Parliament sees fit to enact.

Mr. Munir Sheikh: It's not that we're not trying to answer the questions. What we are really doing is saying that the language is not so precise that we can give you a definitive answer. It really is for the board to come to a decision on it.

Mr. Michael Savage: We'll come back.

The Chair: I'll come back to you, Mr. Savage.

I'm going to move to the Bloc, and Mr. Lessard, for five minutes, please.

[*Translation*]

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

I also want to thank our guests for the information they've given us today.

Mr. Sheikh, my colleague Mr. Lake asked very specific questions concerning the issue of violence, in particular, and that of the balance that might be undermined by this bill. On at least three occasions, you said: "in the minister's view", "according to the minister", "what the minister thinks". Can you tell us whether you're testifying today based on the minister's opinion or based on your own opinion as a senior official?

• (1625)

[*English*]

Mr. Munir Sheikh: I was trying to be quite clear, but obviously I wasn't. My position is that I am trying to be as helpful as I can to the committee members. In trying to be helpful, I am doing my very best to answer questions with responses of a factual and analytical nature.

The policy issue belongs to the minister and to the government. If the minister has spoken on a policy issue here in the committee, I know where he stands. On that policy issue, I can give you the view in terms of what the minister thinks. If the minister hasn't decided on a policy issue, I have no information on it, of course, and I cannot provide any information in that situation.

So I am giving you factual, analytical responses to questions of that nature. To the extent possible, I would communicate to you the information on policy issues that the minister already has provided to the committee in this very situation.

[*Translation*]

Mr. Yves Lessard: All right. I see that that's the minister's opinion, in some respects.

My questions are for you, as an official, since your position gives you privileged access to a certain amount of information. If you don't know the answer, I would prefer that you tell me you don't know. Then I'll know that it's your opinion, not that of the minister.

Today you've submitted some statistics on the basis of which you say that, where there is anti-strike breaking legislation, that's not what influences the number of disputes. You also said you thought

that we had to make sure the current balance was not disrupted. You seem to say that there currently is a balance. Did I understand you correctly?

[*English*]

Mr. Munir Sheikh: I'll answer with two very simple questions. One, am I concerned about the existing balance and worried about disturbing it? My answer to that is that it's not my prerogative to worry about that, it's the minister's.

On the question of—

[*Translation*]

Mr. Yves Lessard: I simply want to know whether or not you think there is currently a balance. I thought I heard you say there was a balance. Did I understand correctly?

[*English*]

Mr. Munir Sheikh: Yes, there is a balance in the accord, based on the law that was designed by the people at the time who said they were establishing a balance in the accord.

[*Translation*]

Mr. Yves Lessard: In your view, does the fact that there is violence on the picket lines respect that balance?

Are you aware that there has been violence on the picket lines in disputes such as those involving Radio-Nord, Cargill, Vidéotron and Sécur?

[*English*]

Mr. Munir Sheikh: Obviously in some circumstances there is violence. As I said, we don't keep statistics on violence because it's hard to define, but that there is some violence is quite obvious. If it exists—and I acknowledged my problem in response to an earlier question on the same issue—it's not quite clear how I, as an analyst, would deal with it.

[*Translation*]

Mr. Yves Lessard: My question supplements that of Mr. Lake, which I think is important. What is violence, in your view? When a person exercises a right and the police are brought in in order to replace that person, is that violence, in your opinion?

• (1630)

[*English*]

The Chair: Mr. Sheikh, you can respond, but with just a quick answer, as we're out of time.

Mr. Munir Sheikh: I think I've already accepted my inability to define both violence and how I would factor that into policy-making.

The Chair: Thank you very much. That's all the time we have.

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

Ms. Libby Davies: Thank you very much.

I'd like to come back to this question of replacement workers and essential services. An impression is being left here that if you cannot use replacement workers, you cannot provide essential services. As I understand it, the reality is that, first of all, most employers faced with a strike don't use replacement workers. We already know that, by the minister's own admission. He himself has put that on the record. In fact, he uses it as an argument as to why we don't need the legislation. We're talking about a very small number of employers that do use replacement workers, and what the impact and consequences of doing that are.

This idea that you can't provide essential services if you can't use replacement workers is completely erroneous. In the Labour Code now, section 87.4 makes it very clear that "the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public." It then goes on to detail that there are mechanisms that either the employer, the union, or the minister can use to make an intervention to get that determination set down.

I'd like to ask Mr. Leduc if he could take us through section 87.4 and point out the steps that exist in the code now and that are used by the board to establish what essential services are. It has nothing to do with whether or not you can have replacement workers. Could you do that, please?

Mr. Luc Leduc: I would be pleased to.

Subsection 87.4(1) provides the principle whereby employers, employees, and bargaining agents have a duty to essentially continue to provide services and production of goods to "prevent an immediate and serious danger to the safety or health of the public". The words "immediate and serious" are in there and have been interpreted by the board.

When notice to bargain has been given, the employer and the trade union must get together and basically come to an agreement on the level of services, what they are and what number of employees will provide them. If there is an agreement, then we continue.

When no agreement is entered into, one of the parties can go to the CIRB to ask for a determination to be made. The minister himself, even if there is an agreement, can look through the agreement and ask the board also to re-examine the question. Then the CIRB can examine the whole situation. It has a number of powers and can basically determine what those services are and the manner in which those services will be provided and imposed, always within the constraint or the definition of imminent and serious danger to the safety of the public. They have to stay within that bound. Once they have done those orders, basically they can review the orders afterwards if there is a reason.

Finally, there is a particular provision with respect to the maintenance of services. If it requires so many employees that it would make the strike or the lockout almost moot, there is a provision to force mediation in such cases.

Ms. Libby Davies: Is it correct that these steps you have just gone through are done on a case-by-case basis? It's not like there's some formula that's applied. It's done on a case-by-case basis, depending on the nature of the work.

The most important thing is that the two parties themselves try to come to their own agreement to establish the level of these maintenance or essential services. It's only afterwards, if they can't do this, that other interventions can be made.

In your opinion, has this provision generally worked even where the board has had to make decisions about what the scope is? Has it generally been an adequate provision? I'm not aware that it's been....

There's a change being sought. Is it a provision that has been working?

• (1635)

Mr. Luc Leduc: I'm not familiar with all the practices. Someone else may be. The provision has been a subject of case law and CIRB decisions, but I wouldn't know how it's been used in practice overall.

Ms. Libby Davies: Okay, but case law does build up. I just quoted one of them, which was the Montreal airport. In each decision that the board makes, either an employer or a union may argue a certain point based on....

So jurisprudence begins to build up, just like in any other labour law situation.

Mr. Luc Leduc: You are correct, there is jurisprudence.

The Chair: Thank you, Ms. Davies. That's all the time we have.

We're now going to move to the last questioner of the second round, and that's Mr. Hiebert.

Five minutes, please.

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

I'd like to follow up on that line of questioning. Is it not the case that the CIRB ruled, in Aliant Telecom Inc. in 2003, that telecommunications services were not considered an essential service? Is that not the case?

Mr. Luc Leduc: Yes.

Mr. Russ Hiebert: I'm going to read a statement, and I want to get your opinion on its validity. Please bear with me—it's somewhat lengthy:

Having regard to the foregoing, if Bill C-257 is enacted, we see three discrete opportunities for a situation to arise where critical services could be jeopardized during a strike. First, given the narrow scope of services that fall under section 87.4's maintenance of activities provision and the interpretation given to this language by the CIRB, it is entirely possible that services that are considered to be "essential services" in British Columbia and Quebec would not be found to be essential services in the federal jurisdiction. Secondly, if the union or the bargaining unit members did not perform services covered by a maintenance of activities agreement or ordered by the CIRB, there is no provision that allows an employer to make other arrangements to have these services performed. Thirdly, the federal Minister of Labour has no power to declare or recommend that services are essential. This power lies exclusively with the CIRB. The CIRB has adopted an approach of refusing to require that services be continued at the onset of a strike and directing the parties to come back to the CIRB during the strike if the interruption of services raises serious health or safety issues. Given the slow pace at which such applications are dealt with, combined with the fact that the Canada Labour Code provides that the strike is not suspended during the proceedings, critical services would in fact be suspended while the application is being determined and thereafter until personnel could be returned to work.

In conclusion,...if Bill C-257 were to be enacted, there is a risk that essential services could be discontinued during a strike or lockout.

I read that from a legal opinion from, I believe, Heenan Blaikie, a well-respected firm in our country, specifically on the points that have been raised by the member from the NDP. I think it's fairly clear here, and I would like your comment on this. During the Aliant Telecom strike, in which we had an example of what would normally have been considered essential services—we're talking telephone calls to 911 and emergency services—these were not considered by the CIRB to be essential services. In light of what I just read, is it not very much the case that essential services could actually be shut down if a strike were to occur?

Mr. Luc Leduc: It depends on how you define essential services. Obviously in your first question you referred to the legislation in British Columbia and the legislation in Quebec, and you said maybe different results could occur if this legislation were enacted under the Canada Labour Code. That's correct. The definition is different. It has words like "imminent" and "serious".

Mr. Russ Hiebert: So to summarize your point, services that would be considered essential in B.C. and Quebec might not be considered essential under the CIRB, and those services would be stopped in the event of a national strike?

Mr. Luc Leduc: That's correct.

Mr. Russ Hiebert: Mr. Sheikh, do you have any comments?

Mr. Munir Sheikh: The only thing I would like to add, which I said before, is that the nature of services being provided by the federally regulated sectors would be quite different from that of services provided by provincially regulated businesses. That leads to this issue that even your quote suggested the relationship between essential and critical. I think the question arises as to whether some people would define some of the critical services as not being essential at the moment. If there is indeed a provision for essential services in light of this legislation, we're expected to pick up some of the critical services that your quotation had mentioned.

• (1640)

Mr. Russ Hiebert: The point I'm trying to make in brief is that we've had numerous discussions around this committee table as to whether or not essential services are protected, and I think this legal opinion and your comments make it clear that they are not necessarily protected. In the one instance in which the CIRB ruled against Aliant Telecom, there were people who had cellphone service with this company and who could not call 911 and could not call the fire department or the police department while this strike was going on. In fact the CIRB upheld the fact that they wouldn't be allowed to. So there's a prime example of essential services being prevented from occurring, and I hope that it addresses the concerns that have been raised around this table.

The Chair: That's all your time.

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

Mr. Michael Savage: I'll ask a question, and then Ms. Dhalla has something else.

The frustration here is that we're not getting any definition of essential services. In the last few weeks since I've been on this committee, we've been asked to wait until we get the technical witnesses and then we'll understand this better. We're not getting a definition, and it's of concern to me.

I want to put a bill in place banning replacement workers, but I'm concerned about it. I'm concerned this bill has loopholes that have the potential to have a severe impact. I don't think any labour union in the country wants to shut down an essential service.

What an essential service is depends on who you are. We've heard from the trucking industry that food in some northern communities is dependent upon trucking, and it is therefore an essential service. 911 is an essential service.

In the absence of having someone able to define for us what an essential service is and not being able to get that definition, I want to go back to the history of the CIRB. Assuming it's correct, section 87.4 of the Canada Labour Code does not empower the CIRB, the Minister of Labour, or the government to order the suspension of a strike or a lockout pending the determination of an issue on the maintenance of activities that arise during a strike or lockout. In fact, the Canada Labour Code specifically states in subsection 87.5(3) that the strike is not suspended. If the strike is not suspended, there is the question of what an essential service is.

Can you tell me again, based on history, how long it takes to get a determination from the CIRB?

Mr. Munir Sheikh: I'll give a quick answer to the very last question. Based on the list I have in front of me, ignoring issues that are really of an urgent nature, such as the CN strike right now, it takes between three and a half months to two and a half years.

Mr. Michael Savage: Is that in the case of a strike that's under way?

Mr. Munir Sheikh: No. These are issues where the board has been asked to come up with a decision on a variety of issues. The board obviously has to find all the facts in order to give an opinion. It's not a question of the board not taking it seriously and taking a long time. Sometimes the issues are fairly complex.

If I can come back to the main issue you raised, I can understand your frustration. I am trying to say, and my colleagues say the same thing, that essential service is what the law defines the essential service to be. We have federal essential services that are defined in the Canada Labour Code. It's what an essential service is. I think the difficulty arises when someone thinks there's a service that should be essential and the code doesn't make it essential.

The example given here is about a call to 911. According to the Canada Labour Code, in the way it is described right now, if the board came to a decision that it is not an essential service, it is not an essential service. The issue is really on what an essential service should be. Once you've decided that, you can put it into law.

My answer to the question of what an essential service should be is that it's not for the officials to come to a decision on what is or is not essential. It is for the Government of Canada and Parliament to come to a view as to what essential is.

•(1645)

Ms. Ruby Dhalla: I want to build on the last question and on what my colleague Mr. Savage said. Like him, I'm very much in favour of banning replacement workers. But as a health care provider as well, I have a very serious concern in regard to essential services.

I know Mr. Hiebert read out a legal opinion that was done by Heenan Blaikie.

Like Mr. Savage, who I think said it best, I think don't think every labour union, as much as they are in favour of this legislation, wants to shut down the very foundations on which our country has been built for those important services for Canadians.

I would appreciate it if Mr. Leduc, as the legal counsel, could provide this committee with a legal opinion within a quick duration. If you could get us some documents over the next week or as soon as possible, as we have a sensitivity for time, we as parliamentarians can determine where we're at right now and what else needs to be done to ensure essential services that are important to Canadians are taken into account. I think a legal opinion from the department on legislation that's going to have a tremendous impact across this country is very important.

Mr. Luc Leduc: Mr. Chairman, Ms. Dhalla, you'll understand I'm with the Department of Justice and I do not provide opinions per se to the committee. We do collaborate.... The committee has a legislative counsel who can provide just as good research and will go into the details and provide that opinion or expertise.

Ms. Ruby Dhalla: [*Inaudible—Editor*]...not necessary if you don't want to give your opinion.

Mr. Luc Leduc: The opinions we provide are for the minister, and we haven't provided one to the minister. So I would defer to your legislative clerk, who has all the expertise required to provide the committee with excellent advice.

The Chair: I'm sure he appreciates that.

Mr. Silva had a quick question before we move back to the Conservatives.

Mr. Mario Silva: It's important that you clarify for the members of the committee when you say the ruling can go from three months to three years for the decision. Really, you can't go on strike until you clarify that. Because you have to wait three or four years doesn't mean that people are waiting all that time during a strike. The reality is that there has to be a decision first before you go on strike, because the impression that was left with the members of the committee is that the strike goes on for three or four years while the decision is still pending by the CIRB.

Mr. Munir Sheikh: The point I'm trying to make here is that depending on the nature of the issue, the board will do its very best to answer, to come up with a view on what it thinks about a particular issue. The timeframe I gave you is the timeframe the board has taken to deal with it.

Mr. Mario Silva: That's not the question. The question is, I realize the timeframe can go from three months to three years or four years, but you can't go on strike until you have a resolution first.

Mr. Munir Sheikh: The way things happen—

Mr. Mario Silva: I mean, it's a simple yes or no question. I'm not sure what you're trying to get at.

The Chair: Ms. MacPherson, do you have a quick response? We are over our allotted time.

Ms. Elizabeth MacPherson: Sure. Two timeframes are contemplated in the statute. The statute provides that the parties are supposed to determine these issues before they acquire the right to strike or lockout. If they fail to do so and the minister refers the question to the board before the right to strike or lockout is acquired, then the right to strike or lockout is deferred until the board makes its determination.

But in cases where the board has determined there's no essential service and the parties are able to go on strike or to lockout, there's a provision to go back to the board. But the parties have already acquired and exercised their right to strike or lockout, so that continues if the question is only put before the board after the strike starts.

So yes, the law contemplates a process whereby you get this determination before you acquire the right. But if that hasn't been done and the right has been acquired, then that right is not lost when the question is put back in front of the board.

Is that helpful?

The Chair: Thank you.

We're going to move now to the last questioner today. Mr. Lake, five minutes, please.

Mr. Mike Lake: I don't think I'll need five minutes.

I'm going to change direction a little bit. I think we have—I'm not sure exactly what the title is—a legislative clerk here with us. I have a question for you about the bill.

Given that the bill doesn't have any essential services provisions, is the committee even able to amend the bill to add them? Is that within the responsibility or ability of the committee?

•(1650)

Mr. Marc Toupin (Procedural Clerk): I think, Mr. Chair, the process is that if members wish to amend Bill C-257 in such a way, they would have an amendment drafted by the House legislative counsel. That amendment could then be looked at, and ultimately the chair of the committee would have to rule as to whether or not it is in order.

The general rule is that it is not proper for a parliamentary committee to go into sections of the Canada Labour Code that are not being amended by this particular bill, by Bill C-257. There has been some reference by witnesses that any amendments to essential services would deal with section 87.4 of the Canada Labour Code, and that particular section is not being amended by Bill C-257.

Mr. Mike Lake: Thank you.

The Chair: We have Ms. Davies.

Ms. Libby Davies: I'm glad you made that point, because it seems to me that there's something really weird going on here. All of a sudden we're now debating section 87.4 of the Canada Labour Code, as though somehow no one has ever raised before that this section isn't able to do its job in terms of determining essential services appropriate to each case. There may be some rulings that people are not happy with, but that is actually not before us.

There's a real misnomer here that somehow you can only provide essential services if you have replacement workers. That's not completely the case, because we know that in most strikes replacement workers are not used. They use this provision under the Canada Labour Code in a legitimate way to determine what those essential services are without replacement workers.

So I feel this has entered into the debate and we need to really clear it up. We're not amending that section of the Canada Labour Code itself. It works quite well as far as I know. No one has raised any problems about it, and it does the job in terms of determining what essential services are. It's not dependent on whether or not replacement workers are used.

I think this needs to be very clear, because we're veering off on a very strange course here.

The Chair: I have Mr. Lake on the list, followed by Mr. Savage.

Mr. Mike Lake: I just want to bring forward a point of order. That sounds like debate to me. I'm not sure if we are going to another round here, or—

The Chair: No, that's just a point that Ms. Davies wanted clarified.

Mr. Savage.

Mr. Michael Savage: I don't know if I'm in debate, questioning, consideration, or what. I listened to Ms. Davies' point. My concern is the same legal opinion, which carries some weight with me, that was referenced by Mr. Hiebert. I agree that we're not debating section 87.4, but this says:

Section 87.4 of the *Canada Labour Code* was drafted and intended to be applied in a specified legislative context; that is, employers being free to employ replacement workers in the form of temporary employees, contractors, managers and/or non-union employees in order to perform struck work and thereby ensure that essential services were continued. Section 87.4 was not intended to be applied in a context where an employer has no ability to perform any struck work and, hence, no ability to keep essential services operational.

Here's my issue. Our legislative clerk has indicated that we can't adjust section 87.4—that's out of the purview of this—but my concern is that we're affecting section 87.4 by changing part of the rest of the first part of the Canada Labour Code. That's where I'm trying to get an answer on this, and I don't have it yet.

The Chair: I'd like to take this time now to thank the witnesses for being before us today. Thank you for taking the time out of your busy schedules to answer some questions that the committee had. Thank you very much.

Mr. Lake.

Mr. Mike Lake: I'd like to move a motion now. I'll read the motion first. The motion is:

In accordance with its Order of Reference of Wednesday, October 25, 2006, your Committee has considered Bill C-257, An Act to amend the Canada Labour Code (replacement workers) and agreed to report the following:

Bill C-257 fails to provide balance to both sides in the collective bargaining process and fails to address other issues reflected in the evidence presented by witnesses. Accordingly, your committee recommends, pursuant to Standing Order 97.1, that the House of Commons not proceed further with Bill C-257, An Act to amend the Canada Labour Code (replacement workers).

That's the end of the motion.

I want to also point out right now that I intend to move a second motion as part of the discussion. A copy of this motion is right here.

• (1655)

The Chair: I'm going to suspend the meeting until we get copies made.

• _____ (Pause) _____

•

• (1700)

The Chair: Okay, we have everyone back. I realize that the copies are coming.

I imagine there is going to be some healthy debate on this.

Mr. Lake, why don't you start? I will be taking names. I realize that the copies of the motion will be forthcoming.

Go ahead, Mr. Lake.

Mr. Mike Lake: I was really hoping it was just going to pass unanimously.

I wanted to point out that the motion itself stands for itself. I did want to mention that I'm not presenting a second motion right now, but I want to articulate that there is a second motion I intend to present following this. The second motion will be that the committee recommends to the Minister of Labour to establish a consultative process to conduct an examination of the concerns raised by witnesses, and the subject matter of Bill C-257, An Act to amend the Canada Labour Code (replacement workers).

There is an intention to move a second motion following this one.

The Chair: Okay. Is that all?

We'll have Mr. Lessard, followed by Mr. Savage.

[*Translation*]

Mr. Yves Lessard: Mr. Chair, in other words, Mr. Lake has announced two motions: one for which we're awaiting the wording, and a second for which the wording will follow later. I don't understand. I'd like to know what we're debating.

[*English*]

The Chair: Sure. He has moved one motion and has discussed what his second motion will be, but he has not moved that motion yet.

[*Translation*]

Mr. Yves Lessard: Mr. Chair, you've just confirmed what I said. He announced one motion, but he debated the second one. I want to understand how we're going to be working from now on.

I suggest we take them in order and that we examine the first one first. It's written and we're going to wait for it. I imagine it will be in both languages. At that point, we'll be able to debate it.

Mr. Chair, may I suggest something? Could we look at our calendar regarding the witnesses to call for Bills C-36 and C-269? That way, we won't be wasting our time while we wait.

[*English*]

The Chair: Thank you, Mr. Lessard.

What we are going to do is tackle them in the order in which they have come in. If there is only one motion on the table, then we are going to address that first and foremost.

We have Mr. Savage, followed by Ms. Dhalla.

Mr. Michael Savage: Thank you, Chair.

I can't support the first motion. We have heard a lot of witnesses. I remain committed to trying to find some way to bring in a bill on replacement workers. I have questions about this one, but I don't think it is right to kill it. Any comments I have I will save for the second motion. The first motion is unsupportable, from my point of view.

The Chair: Thank you, Mr. Savage.

Go ahead, Ms. Dhalla.

Ms. Ruby Dhalla: Like Mr. Savage, I find it very difficult to support the motion, which states that we not move the bill forward. A lot of time and effort has been put into it. I would have been interested in discussing the potential second motion, but since it hasn't been brought forward, I guess we will save the discussion and debate. But we could not support something like this.

The Chair: Thank you, Ms. Dhalla.

I have Mr. Lake.

Mr. Mike Lake: I want to point out that while we are discussing the first motion, I thought it would be important, as part of the debate, to articulate what the second motion was going to be. They go in conjunction with each other. My understanding is that because of the reference to Standing Order 97.1, we can't blend the two as one motion. They need to be two separate motions.

In terms of the communication and Mr. Lessard's concerns, we are dealing with the first motion. I want it to be debated in the context of an additional second motion to come.

The Chair: We are still debating motion number one. I appreciate your comments, Mr. Lake.

If there is no further discussion, then I will call the vote on motion number one.

Ms. Libby Davies: I would like a recorded vote.

The Chair: Mr. Savage.

Mr. Michael Savage: He is talking about the connectivity between motion two and motion one. If motion one is defeated, does that mean motion two doesn't come to the floor?

• (1705)

The Chair: We will have to ask Mr. Lake that question.

Mr. Lake.

Ms. Libby Davies: We should either debate this motion or vote on it. Then if there's something else another member wants to raise, that's fine, but it's a separate matter. We have a motion before us that we're debating.

The Chair: Thank you, Ms. Davies.

Mr. Hiebert.

Mr. Russ Hiebert: I want to bring to the committee's attention the fact that we've had numerous opportunities to debate this issue. We've heard from a lot of witnesses. There's clarity that has come from my participation in this debate.

This motion is suggesting that there are weaknesses in this private member's bill, no matter how well intentioned it is, that have not been addressed. Some of the members raised them at this meeting a few minutes ago. There's the fact that emergency services or essential services would need to be amended if we were to proceed with this legislation. But we cannot amend the private member's bill as it stands, based on the opinion of the clerk.

I think Mr. Lake is simply trying to acknowledge the fact that we, and I think members from all parties, recognize there's a problem that needs to be addressed. This private member's bill doesn't adequately address that problem. We can't amend this private member's bill, so we're looking to find an alternative solution, which is where the second motion comes in.

That is the key point I want to raise at this time, Mr. Chair.

The Chair: Thank you.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: It goes without saying that we can't second a motion like that, particularly since its premises are not only false, but also insulting. When you say that Bill C-257 can't guarantee a balance between the two sides in the negotiation of collective agreements, that's insulting for those who have 30 years' experience with this act in Quebec and 15 years' experience in British Columbia. That's an insult to all the union leaders who have worked with that act and all the unionized workers in Quebec, as well as all employers who work with this act and have found a balance in it. It's also an insult to the former Premier of Quebec, Robert Bourassa, who publicly stated that that act had brought about social peace in Quebec. We know that Robert Bourassa can be considered a great federalist. As you'll understand, we cannot second a motion such as this.

[*English*]

The Chair: Thank you, Madame Lavallée.

Mr. Savage.

Mr. Michael Savage: Thank you, Chair.

I am having trouble understanding exactly the implications of voting on this motion. I cannot vote to kill this bill. I could, under certain circumstances, vote to have it deferred until this panel that has been recommended, suggested, or referred to brings back a more complete review of the Labour Code, including some definition of essential services that has some real meaning in the bill and takes into account other aspects of part I of the Canada Labour Code.

I need to be very clear about why these two bills are connected. If I vote against this bill, the second part of it can't even be debated. Could we bring it up again tomorrow?

The Chair: It's the will of the committee, so we'll vote on it.

Mr. Michael Savage: Why do they have to be separate? Why does one have to be voted on before the other?

The Chair: Mr. Brown.

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

I would support Mr. Lake's motion. I think we've given this adequate study. Hearing the numerous comments, specifically in the last few weeks, highlights the trepidation that leaders in the Canadian economy have with the ramifications of such an implementation of this private member's bill.

We've seen the negative results it had in Ontario when it was utilized. We've seen the decision by the last two provincial governments not to go back in time and adopt a process that would cause hardships for blue-collar workers. Certainly I don't believe we should pick that approach federally.

I think the most responsible thing, in recognition of promoting labour peace and a strong economy, would be to adopt Mr. Lake's motion. Certainly we're not closing the door on further study. The very fact that Mr. Lake mentioned another motion about consultation shows that there's interest to keep studying this, because labour peace is important and we always have to be cautious of new trends and new techniques to make sure labour peace is always an objective for the Government of Canada.

By taking these two motions today, if the committee was to make that decision, we'd send a signal that, one, we're not going to harm our economy, but at the same time, we're always going to be diligent to make sure we continue to research the ideas that have been raised.

I would certainly support this and hope the committee would give Mr. Lake's motion due consideration. If there are small aspects of this that need to be changed, I would hope we don't throw the baby out with the bathwater, because I think we've chosen an appropriate road to follow in what Mr. Lake has put forward.

• (1710)

The Chair: Thank you.

Before we go to Mr. Lessard, Mr. Savage, just to let you know, this does not kill the bill. This is a recommendation that has to go back to the House. It will still be voted on by the full House. That's just a point of clarification.

Mr. Lessard, sir.

[*Translation*]

Mr. Yves Lessard: Mr. Chair, I get the impression I'm in the National Improvisation League here. The situation is completely

crazy. A bill has been referred to us for consideration. We have heard a host of witnesses, and as we are preparing to conduct the clause-by-clause consideration of the bill, an amendment is submitted to us, a surprise motion that we're trying to negotiate like this.

I tell you that trying to negotiate with our colleagues is insulting and contemptuous. Mr. Chair, we can't treat matters as important as this lightly. We all due respect for my colleagues here present, I must say that this is intolerable.

We could very well have introduced a motion today and said that the evidence heard in the first part indicates to us that a better balance will be struck with this bill, and I would have found that insulting for our colleagues. The reverse is also true. You can't say today that Bill C-257 will result in an imbalance in view of the evidence we've heard, because that evidence has to be viewed in perspective, in light of the initial evidence.

We know that there was an imbalance in the evidence. That's been admitted here. By dint of circumstance, we accepted a motion introduced by the Conservatives to add witnesses to the list.

We know that we could also have issued a list to restore the balance. We could have called for the unions, since we heard from the Canadian Chamber of Commerce, then all the list of chambers of commerce of the provinces. We could have done the same with the Canada Labour Congress. We heard it and we could have called for all its affiliate organizations. There would have been a lot of people!

I contend that we should take Bill C-257 in its present form, as it was referred to us by the House, examine it clause by clause and responsibly conduct the evaluation and analysis with which we are required to proceed. That means that we will also examine the matter of essential services.

Are we going to shirk a responsibility that is ours by assigning it to someone else? That would be irresponsible. Ultimately, we could draw certain conclusions, but once the clause-by-clause consideration is done. At the end, we might find ourselves with a clause that is really the subject of special concerns. Everyone could then say that we can't find our way and that we should assign the study to someone else, but we have to know what it is about. We can't assign the whole thing to someone else.

I'm going to oppose this motion. I'll also say that I'm going to oppose any practice of this kind, which consists in introducing a makeshift motion, taking everyone by surprise, and trying to negotiate it with an opposition party. Mr. Chair, this is intolerable.

• (1715)

[*English*]

The Chair: Thank you, Mr. Lessard.

We're going to move to Ms. Yelich, followed by Mr. Silva, Ms. Dhalla, and Ms. Davies.

Mrs. Lynne Yelich (Blackstrap, CPC): Mr. Chairman, I would like to talk about what I think was lacking in the whole debate.

We really only heard how the labour legislation works in two provinces. We didn't hear from provinces that never adopted this legislation. It was on the table in my province, which has an NDP government, and they absolutely refused this kind of legislation. Just because these two provinces have the statistics and data that makes us believe we should make this legislation, as federal regulators...I find that very difficult.

I think it's very important for us to understand what was said today. It is federally regulated because it is essential; it is essential to be federally regulated because it's critical. The word "essential" is very important, but he also said it's "critical" to our country.

In the prairie provinces, we would be devastated with legislation such as this that creates an imbalance.

I don't like where this debate went—almost that we're against labour. We are not. In fact, I believe there should be peaceful and good relationships with peers and bosses in corporations.

We are federal regulators. They're looking to us to make sure this economy doesn't stop. I know our prairie provinces would have a very difficult time. These provinces that are represented by unions have ports. We rely on those ports, and the labour, which put a lot of our goods through to other countries. We rely on good labour relations. We expect that between labour and their bosses.

Nobody has asked the consumers. Nobody has asked us, who rely on these services, what we call essential. I would be afraid that we would never have any input on what would be essential. Our livelihoods on the Prairies are very essential—very essential.

We heard from the mining industry. I think we haven't heard enough, even from the employees. What do the employees think of some of this? We've heard mainly from the union bosses. Perhaps some who were represented here on the last day of witnesses said that they felt they did represent the employees and that the legislation did not represent those people.

I think we're not looking at the bill in the right context. If we're going to actually think about this bill, we should ask other provinces why they didn't adopt this legislation.

We are going through strikes right now in our province. They have replacement workers. They've used another jurisdiction to have replacement workers.

I think this motion in fact says what should be said. All our witnesses have given different scenarios about how this country will have some difficulties if this legislation is adopted. It tilts the balance of power. I think there should be no more discussion about it.

Thank you, Mr. Chair.

The Chair: Thank you, Ms. Yelich.

We're going to move to Mr. Silva, followed by Ms. Dhalla, Ms. Davies, and Mr. Lake.

Mr. Mario Silva: Thank you, Mr. Chair.

I will be speaking against the motion. I will not be supporting it.

Mr. Chair, there's no need for our committee to study whether we should have replacement workers during a strike. The reality is that

either you believe it or you don't. I have very strongly said that there is no need to bring in replacement workers. In fact, during a strike or a lockout it can be quite disruptive. It prolongs strikes. There's no benefit to the working relationships within those particular sites as well.

I realize there are some issues of concern that people have raised. I know the issue of essential services has also been raised a number of times by members of the committee and the witnesses.

The only way one can contemplate there being a study is if the minister were to say he is going to have a study for three or four months, bring all the players together, and then bring in legislation. But the government is not planning to do part B. How can you support having a committee go through the studies and trying to finesse the language that might be needed for this legislation without there also being a plan B that the minister will bring in legislation? A study for the sake of studying, without any proposal by the government to bring in legislation, tells me this is just a delay tactic. I can't support it.

• (1720)

The Chair: Thank you, Mr. Silva.

Now we're going to move to Ms. Dhalla.

Ms. Ruby Dhalla: I share some of the opinions around the table, including those of my colleague Mr. Silva.

I think many members on this side do support the banning of replacement workers. There is an issue with essential services, and that does need to be addressed. However, I'm going to have to speak against the motion. In light of all the work that's been done, I do not believe we can actually have the bill not move forward. I don't think that would do justice to any of the work that's been done and the efforts that have been put in place by many of the individuals.

So this is something that cannot be supported. We do need to have a broader discussion around the issue of essential services, but perhaps we can take that up after we finalize the vote on this motion.

The Chair: Thank you, Ms. Dhalla.

We're going to move to Ms. Davies, followed by Mr. Lake and Madame Lavallée.

Ms. Libby Davies: Thank you, Mr. Chairman.

I'm going to be voting against the motion—surprise, surprise—and the first point I want to make is this. I really believe the House, by a vote, sent us this bill in good faith. It was debated in the House. It had two hours of debate under private members' business. It went to a vote at second reading, which is a vote in principle. The House sent it to this committee believing, as with all other bills and private members' business, that we would continue in good faith to deal with the bill, to hear witnesses, to eventually get to clause-by-clause, and to then make a decision about sending the bill back.

So to try to short-circuit that before we have done our work is very unfortunate, and I think really speaks to the real position being put forward here by the Conservatives—that is, they just want to kill this bill.

I don't for a minute believe this is a rationale for further consultation. There's not a shadow of a doubt in my mind that if this motion were approved, and then the second motion were moved and approved on the basis that we need further consultation, it would probably end up being the longest consultation in history. I can tell you that there's no indication from the Conservative government that they actually want this legislation. This is simply a way to get this off the political agenda, to get it off the table, to get it off the committee...and to not have it go back to the House. Let's be realistic about that.

We've also heard arguments that because it's private members' business—the bill came from a member, from Monsieur Nadeau—it's somehow not quite legitimate; it hasn't gone through the right process, and doesn't have the credibility that other proposed legislation does. I'd like to dispute that too, because I think it gets to the very core of what we do in Parliament. The bills and motions we move as part of private members' business have equal standing to, and as much right to go through the process as, a government bill, or a Senate bill, or anything else for that matter. So I'd like to deal with that one as well, because it keeps on popping up.

The fact that it's a private member's bill doesn't mean that we give it any less attention or any less due consideration. In fact, I could even argue the contrary, that because it's a private member's bill I think we're spending an enormous amount of time scrutinizing the bill and looking at it from various points of view.

I just heard, from the parliamentary secretary, that we've heard mainly from union bosses. I'm like, what? Let's go back and check the record.

I think the split right now is about 80% to 20%, with 80% being employer representatives and 20% being union representatives.

Mrs. Lynne Yelich: I have a point of order, Mr. Chair—

Ms. Libby Davies: The fact is that we determined what witnesses we would hear. We actually agreed, on this side of the table, that we would...

Yes, we've heard an imbalance, and there hasn't been equal representation, but we've certainly heard from a lot of employers. Nobody could argue that we haven't heard from all kinds of employers. National, regional, local, provincial, large operations, small operations—we've heard it all, as we should. And we agreed that we wouldn't submit any further labour witnesses because we felt that the arguments had been made. So the suggestion that somehow we've heard too much from the union side I find quite astounding.

In terms of further consultation, I really want to suggest to Mr. Savage that we should be very clear that this is a tactic being put forward by the Conservatives to basically kill this bill. I think it would be most unfortunate if any member decided to go along with that.

If there are issues around particular points—for example, I know that some members have concerns with regard to essential services—

then I would hope that this is what we will be doing tomorrow and Thursday. We will go through this bill clause-by-clause. Members have the opportunity to submit amendments. If I'm not mistaken, tomorrow at noon we can submit amendments to the bill. So if clarifications are needed, then certainly the members have an opportunity to do that.

• (1725)

So my point is that I think we have to continue in good faith. And this is my final point. If there are members here who believe that this is a bad bill politically or ideologically or whatever, then they'll have an opportunity to vote against it. We will go back to the report stage in third reading in the House. If there are members who think it's not balanced and that they haven't achieved what they want to achieve at committee, then they will have an opportunity to vote for this in the House.

So I feel that it's very important that we do our work, that we do as much as we can to deal with this bill, and that we make our determination. Then let the House decide. That's the point of sending it back. That's the point of its being here, to go through those details and send back a bill, with amendments or without amendments. Then there will be a further two hours of debate in the House. Then all members of the House will decide, on its merit, whether or not they believe in this bill—beyond the principle, in terms of the substance—and whether they think it's balanced. And if they don't, they can vote against it.

So what I want to say is that this is absolutely not the time to do this. We should continue our work. We're close now to concluding the committee process. So let's uphold that process and do our work. And let's just continue with the steps. And other decisions will be made and people can make a decision about what they want to do at that point.

The Chair: Thank you, Ms. Davies.

I have Mr. Lake and Madame Lavallée.

Mr. Mike Lake: Mr. Chair, first of all, I want to speak again to the concept of the two motions, the first of which we're debating right now, and the first of which comes out of some of the concerns we have after listening to much of the testimony here—concerns about balance; concerns about a bill that's flawed in many ways, not just in terms of essential services but in terms of the translation problems and in terms of the suggestion that even management can't run their own businesses; and the concerns I have with the ad hoc approach to legislation that has been developed over years and years through careful and consultative processes. It's clear that there are so many problems with this bill that we need to start over. It just doesn't work.

The second motion, which hasn't been put forward yet—
[Translation]

Mr. Yves Lessard: I have a point of order, Mr. Chair. Our colleague is starting debate on a second motion that we do not have before us. I think he should stick to the motion we have before us; otherwise we'll be debating something we don't have before us. Under the Standing Orders, we clearly cannot begin debate on this motion until we have it in both official languages.

[English]

The Chair: Mr. Lake, continue.

Mr. Mike Lake: I'm not debating the second motion. I'm actually referring to it in my debate about the first motion.

The fact is that if this is something that's going to be pursued, it needs to be pursued through a proper procedure and with a more careful approach. Give the concept a really fair hearing. If we're going to approach something as important as this, it needs to be approached much more carefully.

Industries that are regulated in the federal jurisdiction are, by their very nature, important enough to be protected by federal regulations. Telecommunications, rail and air transportation, and our ports are too important to impact as significantly as they would be impacted by a flawed bill like this, by a bill that doesn't respect the balance that needs to be considered in all labour relations in the federal jurisdiction.

I think at this point what I'd like to do is introduce a motion that we adjourn this meeting and reconvene after the vote tonight.

I call the question on this motion.

● (1730)

The Chair: We have a new motion here, but it is debatable.

We have Madam Lavallée, followed by Mr. Savage, followed by Ms. Davies.

[Translation]

Mrs. Carole Lavallée: Mr. Chair, I move that the meeting be adjourned because it is past 5:30 p.m. We would need unanimous consent in order to continue.

This is a motion that cannot be debated or amended, and on which we must vote immediately.

[English]

The Chair: Okay. Let's correct that. The motion is not debatable. We're voting on Madam Lavallée's motion to adjourn.

Mr. Mike Lake: We'd like a recorded vote on this.

The Chair: We'll have a recorded vote.

(Motion agreed to: yeas 7; nays 3)

The Chair: The meeting is adjourned.

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

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

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

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

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