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The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Friday, April 30, 2021

(Pursuant to rule 3-6(1) the Senate was recalled to sit this date, rather than May 4, 2021, as previously ordered.) [English]

The Senate met at 12 p.m., the Speaker in the chair.

Prayers.

[Translation]

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before starting Senators' Statements, let me again express my hope that you are all keeping yourselves safe, and that the same is true for your families. In the interest of respecting public health directives, I am in St. John's, and will be presiding remotely.

Let me say in advance that I greatly appreciate your cooperation in ensuring that this will work well, and I trust I will have your understanding if there are occasional learning moments.

In the event that my connection is lost, Senator Ringuette, the Speaker pro tempore, will preside the sitting until I am back online, and if she is unavailable, I will ask the Clerk to advise the Senate of this, whereupon the sitting will be suspended, with bells of five minutes before we resume.

Once again, colleagues, let me thank you in advance for your cooperation.

NATIONAL FINANCE

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That the Standing Senate Committee on National Finance have the power to meet on Friday, April 30, 2021, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

SENATORS' STATEMENTS

VETS CANADA

Hon. Jane Cordy: Honourable senators, care and compassion are two things that we, as human beings, require. They expand and multiply when we offer them to others, as well as when we offer them to ourselves. I think you will find that, indeed, when we lend our hand to help another, we end up opening our own hearts in the process.

Our veterans are a group that are in particular need of our help, given the trauma they often experience. I have recently become an ambassador for VETS Canada, an organization that aims to help veterans in need, and I would like to share a bit about them with you.

VETS Canada is a grassroots organization that was started in 2010 by Jim Lowther, a veteran himself, to keep veterans who had lost their families and were living on the streets in high-risk situations from slipping through the cracks. He and his wife, Debbie, formed a small team in Halifax, Nova Scotia, to seek out homeless and at-risk veterans and to help them integrate back into civilian life. Over the years, this has evolved to providing aid of all sorts to veterans in need, including anything from help with groceries or a power bill to emotional or mental health support. A favourite motto of the organization is "They've given so much. It's our turn to give back."

VETS Canada operates from coast to coast to coast with three drop-in support centres across the country with over 1,400 active volunteers. To date, they have assisted with over 12,000 veterans' cases and have helped to house 984 veterans.

One of their most successful and impactful endeavours has been their Guitars for Vets program. This program matches veterans or still-serving members who suffer from PTSD or other service-related disabilities with a gently used guitar and provides them with 10 free lessons with a teacher in order to put "the healing power of music in the hands of heroes."

VETS Canada also recognizes the unique challenges that face women veterans, and their program In Her Boots brings needed items to shelters. VETS Canada also works with shelters in bringing awareness to the particular needs of women veterans and what questions they should be asking in order to best help them.

Honourable senators, I am honoured to support this worthy organization, and I encourage you to read about the valuable work they are doing for our servicemen and women. Sometimes it is not that we do not care, but that we do not remember. We should tie that thought to action. Please remember our veterans and please remember VETS Canada.

EXPRESSION OF THANKS

Hon. Michael Duffy: Honourable senators, I rise today to say farewell. I'm retiring on May 27 — my seventy-fifth birthday.

I have spent most of my adult life reporting on public affairs, so I felt it was an honour to be called here to the Senate to public service. Looking back to the day I took the oath in 2009, I have so many memories and so many people to whom I owe thanks.

At the top of my list is the love of my life, Heather. She is a generous, sensitive, caring woman who has been at my side and a beacon of light on even the darkest days. I want to thank my devoted staff, Mary McQuaid, Melanie Mercer, Diane Scharf, Andrea Guzzo and Bev Muma. To the many dedicated and professional staff here in the Senate, I say thank you.

I won't dwell on the events of 2013; they're chronicled in Hansard. But I will say this about the future: the Senate faces serious challenges that threaten its very existence. The Senate is unelected and unaccountable to anyone other than itself. Sadly, that concept has been twisted to mean that senators are not permitted the procedural fairness available to every other resident of Canada. Even the Charter of Rights has no application here.

I suspect most Canadians would find the idea of the Senate as a Charter-free zone unacceptable in our democracy. Sadly, reform-minded senators are learning that making change here is not easy. It reminds me of the words of the Honourable Hugh Segal who, as he retired, urged senators:

... to champion the central and indisputable importance of rule of law, due process, presumption of innocence as cornerstones of our democratic way of life, whatever dark forces elsewhere — sometimes in government, sometimes in opposition, the police or the media — might seek to dictate or impose upon us.

How far has Senate reform come in the seven years since Senator Segal's statement? Not far enough. Yet, despite the Senate's problems, I'm convinced Canada has a great future, as does my home province of Prince Edward Island.

• (1210)

When COVID permits, Heather and I hope that you will come visit our lovely island, where in 1864, the idea of a country called Canada was born. Thank you.

NUNAVUT INFRASTRUCTURE

Hon. Dennis Glen Patterson: Honourable senators, on April 14, 2021, my hometown of Iqaluit identified its first case of COVID. Today, Iqaluit saw 11 new cases confirmed, for a total 61 active cases. Yesterday there were 15 new cases. Since Iqaluit is the capital and a major travel hub, the outbreak saw a spread to other communities such as Kinngait, which has had six new cases

since the first case was discovered on April 19, and Rankin Inlet, where two people tested positive on April 24. This outbreak has also been confirmed as the B-117 variant from Britain that is known to be more aggressive and contagious, even for those who have been vaccinated.

Thanks to the valiant efforts of Dr. Patterson and front-line workers in the capital and throughout the territory, just over half of adult Nunavummiut have been vaccinated to date. The premier also remains a calm and steady voice of leadership and reason as this scary outbreak progresses, but there is an air of agitation and frustration that has settled on the community. Many, as you know, live in overcrowded houses, making it hard to isolate. I know of a young mother who has tested positive and must live in such an overcrowded home with her young toddlers. I am sure she is not alone.

It is estimated that over 400 units are required to fill the housing shortage in Iqaluit alone. Over 3,000 units are needed throughout the territory. The \$25-million "down payment" — as it has been referred to by Minister Vandal — identified in the recent budget can only go so far. It costs \$587 per square foot for the Nunavut Housing Corporation to build a unit in Iqaluit. Today, it costs \$210 for one sheet of three-quarter inch plywood, good on one side. At these prices, that money could go on to build 45 to 50 homes, a woefully inadequate number when compared to the need. That projection doesn't even take into account the cost of servicing the land, making the necessary infrastructure improvements to support new housing, and the maintenance and renovation costs to bring existing housing up to code.

With the outbreak of COVID-19, we are in the middle of a crisis within a crisis, and we need help. We need clear timelines and definitive amounts to know if and when Nunavut will get the infrastructure funding it so desperately needs, particularly for housing. In the south, infrastructure investment reduces commuter wait times. In the North, big-picture infrastructure spending means saving lives. *Qujannamiik. Matna. Koana.* Thank you. *Taima.*

JOURNEY TO FREEDOM DAY

Hon. Thanh Hai Ngo: Honourable senators, I rise today in commemoration of Journey to Freedom Day, which will be marked with virtual celebrations across the country and around the world. On this momentous national occasion, we pay tribute to the exodus of hundreds of thousands Vietnamese boat people who fled communist persecution after the invasion of South Vietnam by North Vietnamese communist forces, in blatant violation of the Paris Peace Accords and of the Act of the International Conference on Viet-Nam, after the fall of Saigon on April 30, 1975. In spite of extensive diplomatic and military efforts to establish a lasting peace, and in spite of the valiant peacekeeping and supervisory operations of Canadian Forces in enforcing specific provisions of the Paris Peace Accords, hundreds of thousands of boat people refugees fled to the sea, braving the elements, falling victim to pirate attack and enduring starvation in search of freedom. According to UNHCR, close to 250,000 perished at sea. After the war, an estimated 65,000 South Vietnamese were executed and 1 million were sent to communist prisons and re-education camps.

Today, we also celebrate the warm welcome here in Canada. With open arms, Canada welcomed over 120,000 Vietnamese refugees. It was this unprecedented show of generosity and hospitality of the Canadian people that garnered them the UNHCR Nansen medal in 1986, the only time such a distinction was awarded to an entire nation.

Honourable senators, on Journey to Freedom Day we also pay tribute to Canada's profound humanity and the incredible reception of a nation we all proudly call home. For this, the Vietnamese-Canadian community will forever be grateful. Thank you.

NATIONAL ORGAN AND TISSUE DONATION AWARENESS WEEK

Hon. Stan Kutcher: Honourable senators, I rise today to share with you a story from my home province. I am telling this with the help of Martha, one of our daughters-in-law, mother of two of our grandchildren and a geriatrician practising on Prince Edward Island.

I want to share the story of Hannah, who was born and grew up in the beautiful Annapolis Valley. She was intelligent, warm, kind, funny, enthusiastic and lively. Although she lived with pain from Crohn's disease, she rarely complained. An accomplished tango dancer, who held a degree in physics, a diploma in meteorology and a master's degree in atmospheric physics, she was studying to be a teacher. Hannah lived life to its fullest. Her parents are Darrell, a Crown prosecutor, and Sandi, a school principal. Her sister is Martha. When Martha and our son Matt wed, Hannah joined our family as another daughter. She danced her way into our hearts.

One evening, Hannah developed a crushing headache. Unlike her, she complained and was off to the local hospital. Waiting and waiting. Finally, a CAT scan. Hannah was full of life when she went in; there was no life left when she came out. A catastrophic brain bleed. Sadly, life is often not fair.

Later, thankful letters arrived. Strangers had received the gift of a longer life; kidneys, lungs and a pancreas, given by Hannah. Her tissues — bone, skin, heart valves, corneas — went to others in need as well.

Sadly, only about one third of Canadians who could live longer, productive lives with a donated organ receive one. We need to do better than that. Recently, Nova Scotia brought in legislation creating presumed consent for organ donation; a first in North America. Unfortunately, federally, Canada has not yet acted effectively to encourage and promote organ donation.

It is the story of Hannah and others like her that bring to our awareness both the tragedy and the promise of organ donation. In the process of organ donation, Hannah's family was able to find some meaning to her untimely death. They were grateful that other families were able to spend more time with their loved ones; something they would have given anything for. Her death brought life to others.

Honourable senators, National Organ and Tissue Donation Awareness Week was April 18 to 24. We can draw attention to this national need, to turn the tragic death of one into the gift of life for many. We can encourage Canadians to become donors, and we can lead by example by pledging to be organ and tissue donors ourselves.

To bring the story full circle, a few years following Hannah's death, her father Darrell's sight was restored by two corneal transplants, from two different donors. Thank you.

THE LATE CONSTABLE MARC HOVINGH

Hon. Gwen Boniface: Honourable senators, this Sunday the Ontario Police Memorial Foundation will hold the twenty-second annual Ceremony of Remembrance virtually. The ceremony provides an opportunity for officers and families to honour the lives of Ontario police officers who were lost in the line of duty.

This year, I would like to take a moment to pay tribute to Constable Marc Hovingh, who was tragically killed five months ago. Constable Hovingh was a 28-year veteran of the OPP. He served in the Apsley and Bancroft detachments until he moved to Manitoulin Island in 1999, after he and his family fell in love with the beauty of the island.

On November 19, Constable Hovingh died from a gunshot wound after responding to a property complaint. He was 52 years old. Marc was a loving husband to Lianne and devoted father to Laura, Nathan, Elena and Sarah. Friends described him as a loyal and kind man of faith. He loved sailing, building projects and kidding around. The "gentle giant" loved to tease and was able to laugh at himself, revealing his famous "gap-toothed grin," according to his brother Albert.

• (1220)

Chief Superintendent Carson Pardy said:

Marc's death has had a tremendous impact on the entire community: from his church, to his friends and neighbours, the kids he coached, and his OPP family.

The Hovingh family has received a tremendous amount of support from the community. In her eulogy, his wife Lianne described the outpouring of support as "an ocean of love and prayers that have gently covered and comforted us." People, including many strangers, have been overwhelmingly supportive in contributing to the family.

Marc's body was brought back home for the service and the streets were lined with first responders, First Nation drummers and citizens from the island.

Marc often said he was blessed to serve. He did so with compassion, dedication and humility. He modelled his faith in the way he treated everyone he encountered. Fellow officers say he was heroic in his final moments and his actions prevented further deaths.

Dear colleagues, while most of Canada has been hunkered down during this past year, let us remember families such as the Hovinghs, who are not only dealing with the effects of lockdown but are also bearing the suffering of unimaginable loss. We send them our sincere condolences and express our gratitude for the community work that police officers do every day on our behalf.

I invite you to take a moment on May 3 to remember the sacrifices made by those officers who serve and protect Ontario.

Thank you. *Meegwetch.*

ROUTINE PROCEEDINGS

JUSTICE

CHARTER STATEMENT IN RELATION TO BILL C-29— DOCUMENT TABLED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, a Charter Statement prepared by the Minister of Justice in relation to Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

THE SENATE

MOTION TO EXTEND TODAY'S SITTING AND RESOLVE INTO COMMITTEE OF THE WHOLE TO CONSIDER SUBJECT MATTER OF BILL C-29 ADOPTED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, notwithstanding any provisions of the Rules, usual practice or previous order, when the Senate sits today:

1. the sitting continue until the earlier of midnight or the end of Government Business, subject to the provisions of paragraph 7 of this order;
2. the Senate resolve itself into a Committee of the Whole at the start of Orders of the Day to consider the subject matter of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal;

3. the Committee of the Whole on the subject matter of Bill C-29 receive:
 - (a) representatives of the "Syndicat des débardeurs du port de Montréal SCFP, section locale 375", for no more than 65 minutes;
 - (b) representatives of the Maritime Employers Association, for no more than 65 minutes; and
 - (c) the Honourable Filomena Tassi, P.C., M.P., Minister of Labour, and the Honourable Omar Alghabra, P.C., M.P., Minister of Transport, each accompanied by at most three officials, for no more than 125 minutes;
4. the Committee of the Whole on the subject matter of Bill C-29 rise no later than 255 minutes after it begins;
5. during the appearance of each group of witnesses before the Committee of the Whole, introductory remarks be limited to a maximum of five minutes;
6. if, during the Committee of the Whole, a senator does not use the entire period of 10 minutes for debate provided under rule 12-32(3)(d), including the responses of the witnesses, that senator may yield the balance of time to another senator; and
7. the provisions of rule 16-1(8) may be invoked at any point during today's sitting, if there is a bill awaiting Royal Assent, provided that, if the Senate reaches the end of Government Business before the message from the Crown is received, the sitting be suspended pursuant to that rule to await the message.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

ADJOURNMENT

NOTICE OF MOTION

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I give notice that, later this day, I will move:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, May 4, 2021, at 2 p.m.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

PORT OF MONTREAL OPERATIONS BILL, 2021

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-6(1)(f), I move that the bill be placed on the Orders of the Day for second reading later this day.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

(On motion of Senator Gold, bill placed on the Orders of the Day for second reading later this day.)

[*Translation*]

PARLIAMENT OF CANADA ACT

BILL TO AMEND—FIRST READING

Hon. Marc Gold (Government Representative in the Senate) introduced Bill S-4, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts.

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

(On motion of Senator Gold, bill placed on the Orders of the Day for second reading two days hence.)

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-218, An Act to amend the Criminal Code (sports betting).

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

(On motion of Senator Plett, bill placed on the Orders of the Day for second reading two days hence.)

[*English*]

QUESTION PERIOD

HEALTH

COVID-19 VACCINE ROLLOUT

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, before I ask my question of the government leader, if you would indulge me, our deputy leader is not with us today, as she and her family have been sitting with her dying mother for the last few days, which is expected to not last very much longer. Therefore, our thoughts and prayers are with Senator Martin during this time.

My question today is for the government leader in the Senate.

• (1230)

Senator Gold, although the Johnson & Johnson COVID-19 vaccine was approved almost two months ago, the first shipment arrived only this week. We don't have a confirmed date for when the next shipment is coming, although we have been told it is sometime in June. The Moderna shipment received on Wednesday was late and contained only half of the amount previously expected.

Canada will not be receiving AstraZeneca from the Serum Institute of India anytime soon due to the crisis unfolding in that country. The AstraZeneca we have received to date has either been lent to us by the United States or taken from a supply primarily meant to help developing nations.

Leader, less than 3% of all Canadians are fully vaccinated. Given all of this, how can the Prime Minister say he has no regrets about his government's vaccine rollout?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator.

I've been advised that, to date, the government has delivered close to 14 million vaccines to provinces and territories. Each week in May, 2 million doses of Pfizer will arrive. That means that starting next week, Canada is expected to receive a cumulative total of between 10.3 and 12.3 million doses when you add all of this together, including Moderna. Again, that's putting all of the sources together.

So the short answer to your question is that this government continues to exceed its promises in terms of getting as many vaccines to the people of the country as possible, and the provinces and territories are doing an excellent job in getting those vaccines into people's arms.

Senator Plett: My question was how the Prime Minister can say he has no regrets. I assume from your answer that you concur: There are no regrets needed for the dismal failure of the government in their rollout.

I have a supplementary question, Senator Gold, and I'm hoping that you will be a little more forthcoming with a direct answer on this. As I mentioned earlier, Canada has taken AstraZeneca vaccines from a supply that was meant to help the world's most vulnerable people. Canada is the only G7 country to take vaccines from COVAX — over 300,000 doses, in fact.

Leader, I understand that the Prime Minister is going to give a speech at a global celebrity concert next week. He is going to talk about the need for international cooperation to end the pandemic. Tell us this, leader: Will the Prime Minister tell celebrities how his failure to provide adequate vaccines for Canadians led him to raid the vaccine supply for developing nations?

Senator Gold: Senator, thank you for your question, but the assumptions and assertions you're making with regard to COVAX are simply not correct. Canada is a major contributor to COVAX and, according to the rules of the program, has increased its contribution above and beyond what was required and requested to assist — as Canada will — the countries of the world. Also, the program allowed Canada, with additional investments, to secure a supply for Canadians.

Canada is on track to receive at least 49 million doses of vaccines by the end of this coming quarter — by the end of June. We all would share a regret that Canadians have had to suffer through this pandemic in terms of so many lives lost, so many families affected and of such horrible consequences to the mental and physical health of individuals and businesses. However, the Government of Canada continues to work around the clock to do the very best it can. With the number of doses we have received and are scheduled to receive in the months to come, the Government of Canada is doing its best — and a good job — to protect Canadians.

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Thanh Hai Ngo: Honourable senators, my question is for the government leader in the Senate.

Senator Gold, on March 17, 2021, I received a written response from Global Affairs Canada concerning the number of Canadians arbitrarily detained in China. In their reply, they confirmed that:

As of February 15, 2021, there were 119 Canadians in custody in Greater China (mainland China, Hong Kong and Taiwan).

Senator Gold, how embarrassing and deeply offensive of Global Affairs Canada to have listed Taiwan, a respected international player and thriving democracy that adheres to the rule of law and human rights, as a part of "Greater China."

Senator, why has Taiwan been listed as such?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question and for raising this important issue. I don't have the answer to your question, but I will certainly make inquiries and report back to the chamber.

Senator Ngo: Senator Gold, I have a supplementary question. The "one-China" policy is outdated, misleading and highly counterproductive as it implies that Taiwan, a dependable and like-minded partner that has been a sovereign and independent nation for over 70 years, is complicit in China's tyrannical communist regime, hostage diplomacy and ongoing human rights violations.

At the end of February, a bill was introduced in the United States House of Representatives calling on the U.S. to abandon the one-China policy, resume formal relations with Taiwan and begin negotiations on a U.S.-Taiwan free trade agreement.

Senator Gold, when will this government scrap the antiquated one-China policy and embrace Taiwan for what it truly is?

Senator Gold: Thank you for your question. Canada has a long-standing relationship with Taiwan, and it has been supportive in many respects.

I don't have the answer to your question. As senators will know, the nature and extent of Canada-China relations, as complicated and complex as they are, is a matter that is under ongoing review by this government. When I have an answer to your question, I'll be happy to report it to the chamber.

[Translation]

INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT

COVID-19 VACCINE PATENTS

Hon. Marie-Françoise Mégie: My question is for the Government Representative in the Senate.

This year, the World Health Organization, or WHO, is celebrating World Immunization Week from April 24 to 30. This year's theme is "Vaccines Bring Us Closer." This campaign showed how vaccination connects us to people and helps improve everyone's health. In today's world, where everything is connected, an epidemic poses a threat to everyone, regardless of where it starts.

Although we have invested a lot of public funds in vaccine research and development, companies are the only ones who have benefited from this public-private partnership to date, and we are lagging behind in meeting the ultimate goal of vaccinating everyone around the world. We can count on one hand the number of people who have been vaccinated in my home country of Haiti.

Canada's refusal to support calls for the WTO to waive patents on the COVID-19 vaccines is not helping to curb the pandemic. The WTO Council for Trade-Related Aspects of Intellectual Property Rights is meeting today to study the request from South Africa and India regarding patents. In order to guarantee fast, fair access to vaccines, will Canada stand in solidarity with the 55 member countries that are calling for a waiver on vaccine patents in order to end the global COVID-19 pandemic as soon as possible?

• (1240)

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for raising this question.

The government is committed to ensuring fair access to effective COVID-19 vaccines around the world. COVID-19 will not be defeated until vaccination is provided everywhere.

I'm advised that, as early as December 2020 and possibly before that, when the parties requested a waiver of the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Government of Canada contacted the proponents of the waiver to better understand their concerns. The government has been actively working with international partners to proactively support the WTO Director-General's efforts to strengthen the organization's role in the global dialogue with the pharmaceutical sector in order to speed up the production and equitable distribution of vaccines around the world.

The government is committed to finding solutions that everyone can agree on to this important issue.

[English]

FOREIGN AFFAIRS

COVID-19 PANDEMIC—SUPPORT FOR INDIA

Hon. Ratna Omidvar: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Gold, I'll stay with the COVID crisis but turn our eyes to India. As we all know, India is burning, literally and metaphorically — 300,000 new cases per day, 3,000 deaths each day, likely under-reported. Should further action not be taken, India could have over 1 million cases each day, which would send the country into a tailspin with knock-on effects that will reverberate across the globe, including Canada.

In February, I remind my colleagues, India came to our aid by shipping vaccines to Canada to support our vaccination drive. It is now time for us to be generous in return and send much-needed supplies, such as ventilators and component parts. Other countries, such as the U.K., are doing this. The \$10-million funding to the Indian Red Cross announced by the Prime Minister is a great start. I, along with my colleagues in the Senate who have close ties to the Indian subcontinent, wish to thank the Prime Minister for this first step, but will Canada send much-needed medical supplies?

[Senator Mégie]

Hon. Marc Gold (Government Representative in the Senate): I thank my honourable colleague for raising this question. The Government of Canada and all Canadians are looking with alarm and compassion at the situation in India and the horrible consequences to the people of that country.

The Government of Canada is in dialogue and in contact with the Government of India. Thank you for acknowledging the offer that Canada has already made. I can assure this chamber that Canada will continue to do whatever it can to assist India in this most difficult time.

Senator Omidvar: Senator Gold, thank you for that. As we all know, Canadians are generous people. Already, fundraising drives are being held by Canadians, including Indo-Canadians, and they are opening their wallets to help India out in its hour of need. They want to know whether the Government of Canada will match these donations as it has done in the past with other catastrophes.

Senator Gold: Thank you for that question. Congratulations to the initiatives that people are taking. I don't have an answer to that question, but I will be very happy to make inquiries on this important initiative. I'll report back to the chamber as soon as I can.

Senator Omidvar: Thank you.

AGRICULTURE AND AGRI-FOOD

INNOVATION

Hon. Robert Black: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, agriculture is one of the only industries that experienced economic growth in 2020. While industries across the country saw a decline by 5%, agriculture grew by 7%. Agriculture has certainly proved its resilience time and time again during this challenging period.

Last week, the finance minister announced the 2021 budget, and I was pleased to hear agriculture and rural communities will be supported in key matters such as broadband infrastructure and support for temporary foreign workers. That said, I'm curious to learn more about how the government plans to encourage continued growth in this industry.

Honourable colleagues, more and more farmers approach retirement every year. However, not many Canadian youth consider farming or agriculture in general to be an attractive career path. Unfortunately, this means that we could be facing a shortage of producers in the coming years. Given that this sector is the only one to experience growth during this difficult period and experts anticipate demand for continued growth during this difficult time, I believe we have an obligation to show our youth that opportunities in agriculture are as vast as our country's fields. We know it is imperative to invest in innovation today so we can work to enhance and strengthen our industries for tomorrow. I am hopeful that, going forward, the agricultural sector will be supported, given that the government highlighted that resources in manufacturing sectors, including agriculture,

will be the foundation of Canada's new sustainable economy. In fact, Budget 2020 provides a Strategic Innovation Fund with \$7.2 billion to support innovative projects across the economy in fields such as agriculture and life sciences.

Senator Gold, of the \$2.2 billion, how much will be allocated to support agriculture and encourage growth in this very important sector?

Hon. Marc Gold (Government Representative in the Senate): I thank the honourable senator for his question and his continued work to champion the interests of Canada's agriculture sector. The government knows well that the agriculture and agri-food sector can and does play a key role in Canada's economy and can play a key role in its recovery, in building a sustainable and innovative future.

Thanks also for the advance notice of the question. It allowed me to inquire with the government on the details of the \$2.2-billion Strategic Innovation Fund and how it will be divided up. I have been advised as follows: There are no sector-specific earmarks in the fund. Rather, it's a program of general application to which agriculture and agri-food projects are most welcome. In the past, as you would know, the fund has supported the Canadian Agri-Food Automation and Intelligence Network in 2019 and a state-of-the-art poultry facility in Ontario the previous year. The honourable senator has a unique visibility on certain initiatives that could be presented to the Strategic Innovation Fund to engage young people in agriculture, and I'm sure they would be most welcome and warmly received.

JUSTICE

BILL C-22—POTENTIAL AMENDMENTS

Hon. Wanda Elaine Thomas Bernard: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, Indigenous peoples make up 31% of all people in federal prisons and 44% of women in federal prisons. As the Minister of Justice noted in his speech on Bill C-22, "These figures are staggering . . ."

Some preliminary correctional data shared by the government indicates that Bill C-22 may reduce imprisonment for mostly non-racialized accused and prisoners but will once again leave Indigenous peoples and particularly Indigenous women behind.

The government has committed to reducing the number of disproportionately harsh sentences for Indigenous peoples. With this objective in mind, will the government accept amendments to Bill C-22 to ensure it meets such objectives?

Hon. Marc Gold (Government Representative in the Senate): I thank the honourable senator for her question and for her continued interest and attention to this important bill.

This government is taking very progressive action on criminal law reform. No government has removed a mandatory minimum penalty from the Criminal Code prior to now.

I have also been advised that, between 2007 and 2017, the proportion of Black Canadians admitted to federal corrections for importing or exporting drugs increased from 33% in 2007 to 43% in 2017. Even worse, the proportion of Indigenous offenders admitted for firearm-related offences punishable by a mandatory minimum penalty more than doubled.

• (1250)

In addition, Bill C-22 expands eligibility for conditional sentence orders that were previously restricted. I've been advised that in one academic survey, the researcher found that over 80% of the Indigenous women who had received a conditional sentence order prior to the enactment of restrictions of the previous government would have been ineligible for a CSO under the new laws. The Ontario Court of Appeal, in the *Sharma* case, noted that these limits on the availability of CSOs undermined the remedial purposes of *Gladue* principles.

The government is always open to considering suggestions for improving its laws, but I'm not aware at the moment of any such plans beyond the bill that you are referring to.

CROWN-INDIGENOUS RELATIONS

INDIGENOUS HOUSING

Hon. Dennis Glen Patterson: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Gold, Budget 2021 saw the government give what Minister Vandal called a "down payment" of \$25 million for housing in Nunavut. The Nunavut Housing Corporation has also received only a fraction — \$4.9 million — of the \$79 million they applied for from the Rapid Housing Initiative.

Given the urgent housing crisis I referred to in my statement today, and the overcrowded and desperate conditions that are exacerbated and illustrated by the current COVID crisis in Nunavut, my question is this: Will this government immediately allocate the \$500 million asked for by Nunavut Housing Corporation to alleviate Nunavut's long-standing housing crisis from the \$4.3 billion identified in the recent budget for Indigenous-based infrastructure? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, Senator Patterson. Everyone deserves a safe and affordable place to call home.

With regard to the \$25 million in Budget 2021 that has been referred to, this is for immediate projects this year and will result in 100 new housing units. This is a start, although more needs to be done.

On the Rapid Housing Initiative, I have been advised that the government has been seeking additional funding to support even more deserving projects in light of the demand and quality of the applications that have been submitted to date. However, I do not yet have details of the application process for the \$4.3 billion in distinctions-based Indigenous community infrastructure in Budget 2021, which was the focus of your question. I will make inquiries and report back.

I would add, however, that Nunavut will also benefit from the \$2.5 billion in new funding through the Canada Mortgage and Housing Corporation. I hope that is also a step in the right direction to addressing the housing shortage to which you refer.

HEALTH

COVID-19 VACCINE ROLLOUT

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my next question is addressed to Senator Gold and concerns an issue I have raised numerous times already this year, and that is the four-month delay between doses of the two-shot COVID-19 vaccines.

It was reported on Wednesday that a hospital in Montreal is facing an outbreak of COVID-19 amongst at least 14 members of its emergency room staff. Most of these doctors, nurses and clerks had received their first vaccine dose but not their second. As well, a critical care doctor in Toronto stated on social media that they are seeing patients admitted to the ICU with COVID-19 well after their first vaccine shot and before their second.

Leader, there are real consequences for delaying the second shot far beyond what the manufacturers advise. If your government is so confident about its vaccine supply, why do we still have a four-month delay between doses?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for your question. All our thoughts go to those who are suffering from COVID and the front-line workers who regularly put themselves in harm's way.

The decision and advice that the Government of Canada has been given from its professionals and from scientists, as well as the advice the provinces are being given from their professionals, is that, on balance, extending the period between the first and second doses was the better and more appropriate response to ensuring that as many Canadians as possible receive a first dose so as to accelerate the process of flattening the curve and slowing the spread.

The introduction and presence of new variants have complicated the situation significantly. However, the government is still of the view that the advice it took and provided — I speak for the federal government, of course, but I think it would be the same for the provinces — was, on balance, the appropriate decision to take.

Senator Plett: Leader, I'm sure the 14 members of the emergency room staff would disagree with the ill-gotten information upon which the federal government is obviously basing its decisions.

[Senator Gold]

Leader, you and others in government keep saying that this delay is a provincial decision. Provinces are 100% dependent on the vaccines that the Trudeau government has obtained for them. The National Advisory Committee on Immunization has been crystal clear that its recommendation of a four-month delay was based on the poor vaccine supply and nothing else.

Leader, the four-month delay between doses is something no other country is practising. Do you recognize that this is a direct result of the Trudeau government's vaccine procurement failure?

Senator Gold: The short answer is no. Thank you for your question. The National Advisory Committee on Immunization supported the delay of second doses by up to four months in order to maximize the number of people gaining some resistance. I have repeated on many occasions that Canada, despite the lack of a domestic manufacturing capacity, has done extraordinarily well and is ranking high amongst G-20 countries in terms of the number of vaccines already administered to Canadians.

[Translation]

JUSTICE

MANDATORY MINIMUM PENALTIES

Hon. Josée Forest-Niesing: My question is for the Government Representative in the Senate.

Canadian courts at all levels have declared that mandatory minimum sentences are unconstitutional because they are ineffective, unfair and cruel. Mandatory minimum sentences are also extremely costly, and many studies confirm that they do not deter crime. We also know that they have had the unacceptable effect of increasing incarceration rates while at the same time disproportionately affecting Indigenous, black and racialized people and women in particular.

Bill C-22, which would eliminate a certain number of mandatory minimum sentences, is clearly based on the recognition of these failures, and I commend this important and appropriate step towards a fairer sentencing regime.

However, I am wondering why all mandatory minimum sentences are not being eliminated. Senator Gold, what benefit does the government see in keeping the 50 or so mandatory minimum sentences that would be left in the Criminal Code?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator.

The government is taking a significant step forward by eliminating a large number of mandatory minimum penalties, as I already mentioned in my response to Senator Bernard. There are, indeed, still a number of them remaining, as you pointed out, and the government is still looking at potential next steps.

However, it is important for us, as parliamentarians, to do our part and carefully study the bill as soon as we get it. I thank you for your approval in principle of Bill C-22 and the step forward it represents.

• (1300)

[English]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the order of earlier this day, I do now leave the chair for the Senate to be put into a Committee of the Whole on the subject matter of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal. The committee will be presided by the Speaker pro tempore, the Honourable Senator Ringuette. To facilitate appropriate distancing, she will preside the committee from the Speaker's chair.

PORT OF MONTREAL OPERATIONS BILL, 2021

CONSIDERATION OF SUBJECT MATTER IN COMMITTEE OF THE WHOLE

On the Order:

The Senate in Committee of the Whole in order to receive representatives of the Syndicat des débardeurs du port de Montréal SCFP, section locale 375 and the Maritime Employers Association, and the Honourable Filomena Tassi, P.C., M.P., Minister of Labour and the Honourable Omar Alghabra, P.C., M.P., Minister of Transport, each accompanied by officials, respecting the subject matter of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

(The sitting of the Senate was suspended and put into Committee of the Whole, the Honourable Pierrette Ringuette in the chair.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole on the subject matter of C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

Honourable senators, in a Committee of the Whole senators should address the chair but need not stand. Under the Rules the speaking time is ten minutes, including questions and answers, but, as ordered, if a senator does not use all of his or her time, the balance can be yielded to another senator.

The committee will hear from representatives of the union, followed by a representative of the employer, and then the Minister of Labour and the Minister of Transport.

I would now ask the first witnesses to join us.

(Pursuant to the Order of the Senate, representatives of the Syndicat des débardeurs du port de Montréal SCFP, section locale 375 joined the sitting by video conference.)

[Translation]

The Chair: Honourable senators, our first witnesses are from the Syndicat des débardeurs du port de Montréal SCFP, section locale 375. I would invite you to introduce yourselves and to make your introductory remarks of at most five minutes.

Michel Murray, Union Representative, Montreal Longshore Workers' Union — Canadian Union of Public Employees (CUPE 375): My name is Michel Murray, and I am the spokesperson for the Montreal Longshore Workers' Union. I represent 1,150 men and women who are longshore workers at the Port of Montreal. I am accompanied by the union's legal counsel, Yves Morin.

I thank senators for inviting us to speak. We are here to provide our comments on the special legislation introduced by the government.

First, ever since the Supreme Court ruling in *Saskatchewan* in 2015, there is no court that doubts that removing the right to strike constitutes a substantial infringement on the right guaranteed under section 2(d) of the Canadian Charter of Rights and Freedoms. Even the International Labour Organization, the ILO, several of whose international conventions Canada has signed, recognized that. To violate a Charter right, there would need to be a matter of some urgency, and such urgency must necessarily be evaluated using objective criteria.

The Canadian Industrial Relations Board has already ruled on the objective criteria. It received an application from the employer regarding essential services and rendered a decision on June 8, 2020. Over the course of the hearings, the employer called 22 witnesses and filed 127 exhibits, and there were 27 days of hearings on the nature of the employer's essential services application. On June 8, 2020, the board ruled that:

... the Board is of the view that the evidence is insufficient for it to allow the employer's application for the maintenance of all longshoring services in the event of a strike at the Port of Montréal. In light of the evidence presented, the Board is not satisfied that it would be necessary to maintain all longshoring activities, as requested by the employer, to prevent an immediate and serious danger to the health and safety of the public.

I will come back to the health and safety aspect a little later.

With regard to the much-talked-about economic aspect, I would like to remind senators that the longshoremen's union was part of the 1996 review of the Canada Labour Code better known as "Seeking a Balance" or the Sims report. That review was

conducted under a Liberal government, and the Minister of Labour was Alfonso Gagliano, who did a wonderful job for the longshoremen's union at the time. Mr. Sims said:

Neither statute recognizes economic impact as a criterion for the designation of essential services. While economic impact remains significant, economic interests can be protected in other ways.

It appears, therefore, that this bill seeks to make the economic aspect an essential criterion. To date, no court has recognized that criterion. In fact, the Supreme Court itself stated in *Saskatchewan* that the right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations, as supported by jurisprudence and by Canada's international obligations. According to the judgment in *Saskatchewan*, the time has come to give the right to strike constitutional benediction.

A more recent Supreme Court decision, *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, stated the following:

However, a measure whose sole purpose is financial, and which infringes *Charter* rights, can never be justified under s. 1.

I am here to tell you that the government is trying to take away our constitutional right. We like to believe that senators are the guardians of the Charter and the values within it. That cannot be tossed aside for financial interests. The ILO and the Supreme Court have protected that right in these decisions.

I would like to address the issue of medical equipment that has been raised in the various House of Commons hearings. As everyone knows, we are in the midst of a pandemic. Although under no obligation to do so, the union offered to the employer, both last year and again over the past seven days, to unload any containers that contained medical supplies related to the pandemic. We did so without any request for recognition, and we are under no obligation to do so, but on humanitarian grounds, and we understand —

The Chair: Mr. Murray, I have to stop you there. We'll now go to 60 minutes of questions for you.

Senator Carignan: Good afternoon, Mr. Murray. My question has to do with the decisions you are referencing. There have been a number of interventions, including decisions from the Industrial Relations Board and one on a recent complaint where good faith bargaining was discussed and the parties appeared to be in conflict on this issue. The Industrial Relations Board dismissed the bad faith bargaining complaint, but did criticize the union harshly. I'll read the passage for you:

Is the union making every reasonable effort?

The board has difficulty with the fact that the union launched a strike in August 2020 before it had even provided the employer with the necessary details of its demands and without having submitted its monetary and wage demands. This could be construed as completely irresponsible and inconsistent with a reasonable negotiation process.

• (1310)

Your collective agreement, which expired in 2018, was the subject of notices to bargain and several votes in general meetings so that you could use pressure tactics, including strike action. How is it that, in 2021, we have a decision by the Canada Industrial Relations Board, the CIRB, indicating that you haven't started negotiating and there is no offer on the table?

Mr. Murray: The CIRB hearings were held in August 2019. The union acknowledged the decision. The employer had not submitted its financial offer, as had previously been agreed by both parties. We were facing major challenges in August. Things had broken down. We used our right to strike to try to have some influence at the bargaining table. We exercised our right and both the union and the employer submitted their financial demands thereafter.

Senator Carignan: With respect to the goods, you offered to find containers of medical supplies, among other things. With respect to decisions concerning the essential services you mentioned earlier, paragraph 22 states:

In 2018, for the fifth year in a row, the Port of Montréal experienced significant growth; 39 million tons of goods passed through it. The goods that pass through the Port of Montréal include perishable goods and dangerous goods, pharmaceutical products, fire protection and public safety equipment, medicinal plants, pesticides, chemicals, foodstuffs, fertilizers, ores and explosives, to name just a few.

Am I to understand that all these goods can actually be stored on ships that are docked or passing through, but waiting somewhere on the waterway with all the risks that can entail?

Mr. Murray: During a strike or lockout at the Port of Montreal, and there have been 21 days of lockout in the past 25 years, the ships leave the Port of Montreal and head towards other ports. The trains are cleared out from Port of Montreal land.

As for all of the things you mentioned, aside from the medical supplies, about which I already said that the union had made a special offer to the employer — in fact, since the strike began, no one has asked us to remove any containers. I assume that there aren't any in the port at this time.

The CIRB considered the request. These are not considered essential services.

Senator Carignan: Could you tell us how many hours of meetings and negotiations you've had so far with the employer's representatives? Do you have a calendar or any kind of record to give us an idea of how many meetings were held, both for negotiation and mediation, for it to be declared a failure?

Mr. Murray: There were over 100 days of negotiation, and the parties were waiting for the CIRB's decision for about 40 of them. Those hearings lasted a year and a half. We only got the decision last year, in June 2020. We had about 40 negotiation meetings, and I think parties on both sides were well aware that there was a wait-and-see attitude with regard to the negotiations and the upcoming decisions. This was my fourth negotiation with

the Port of Montreal. It is common practice for negotiations to take two or two and a half years. Unfortunately, the management structure is the reason why it takes so much time to come to an agreement.

It is nothing new for Port of Montreal negotiations to take so much time or for there to be so many meetings, senator.

The Chair: You have another four minutes, Senator Carignan.

Senator Carignan: I would like to talk about the special legislation. Does the possibility of special legislation influence negotiations?

In preparing for this, I read an article in a union paper. It stated that Mr. Harper's former Conservative government made it clear it would bring in special legislation if a strike were to occur at the Port of Montreal. That prompted the parties to negotiate and sign a collective agreement.

In this case, people weren't necessarily expecting the Trudeau government to introduce special legislation, given the minister's statements last August.

Mr. Murray: I was at the bargaining table until this past Tuesday. In our opinion, the special legislation that the Minister of Labour announced on Sunday killed any chance of finding a resolution. On Tuesday, the employer walked away from the table after the union presented an offer.

The details of the negotiations go from one bargaining table to the other, in accordance with the parameters agreed upon by the parties with the mediators, but the employer walked away from the table. There's no doubt in our mind that, far from helping the bargaining process, the special legislation killed it entirely. In our opinion, the employer is waiting for the special legislation.

I want to point out that, even before the special legislation was announced, the union had sent two strike notices in response to two measures taken by the employer. For seven days, we have been saying that if the employer withdrew these two measures and reverted to the provisions and practices that existed on April 9, 2021, before it changed the dockworkers' working conditions, the Port of Montreal would reopen within hours.

There's no need for special legislation. All the employer, a representative of which will testify after me, would have to do is withdraw these two measures and revert to the provisions that existed on April 9 and the strike would be over. We made this offer seven days ago, and there has been radio silence from the employer since then.

[English]

Senator Lankin: I very much appreciate your appearance here, gentlemen, and your assistance with understanding the context within which we are examining this bill.

Let me say, from my perspective in terms of the Senate, our job is to look primarily, in this situation, at the constitutionality of the legislation itself. We're not here to look into, delve into or make a judgment about which side in a labour dispute is

meritorious or not, or if both sides are or are not. We're here to understand and examine the government's legislation and whether this is both an appropriate and a constitutional response.

The Government Representative in the Senate had tabled a constitutional opinion today, or a Charter Statement, about how the government sees this bill complying with the Charter, and very similar, Mr. Murray, to the comments that the minister has made in the last few days, which talk about the general, broad spread economic impairment, job loss and other things that would affect many parts of the Canadian economy. She makes reference to, but doesn't put forward as a central provision, the exacerbation of that problem due to the pandemic.

I'm struggling with that. First of all, a "broad economic impact" to me is not a test under the Charter. The Charter sets out the right to freedom of association in section 2. It sets out the government's right to reasonable justification for limiting that in section 1. Tests in the courts, whether it is the *Saskatchewan Federation of Labour v. Saskatchewan* that you talked about, which went to the Supreme Court and established a threshold or a test of "significant interference," or the Canada Industrial Relations Board decisions, which have established tests about the nature of public endangerment and the immediate dangerous nature of that. Again, the circumstances here don't clearly set out how this particular bill meets it.

• (1320)

You've spoken about the fact that while many people bemoan there have been two years of negotiations without an agreement, almost two years of that was involved in the adjudication of essential services. That decision that I think came out in August of last year — which is fully within the pandemic time frame and the pandemic lens of looking at this — was issued and completely rejects the 20-plus witnesses, interveners and the 100-odd pieces of evidence that had been put forward by the Canadian Manufacturers & Exporters association to indicate why these services were completely essential — a broad stroke — and that a strike could not take place.

Could you comment on your view of the constitutionality, the Charter of Rights and the relationship of section 2, the freedom of association, which grants the right to strike as recognized, and the section (i) limitations and justification for that?

[Translation]

Mr. Murray: I will give the floor to my attorney, Yves Morin, who will be better able to answer your question.

Yves Morin, Union Legal Counsel, Montreal Longshore Workers' Union — Canadian Union of Public Employees (CUPE 375): As Mr. Murray explained to you at the beginning of his speech, the 2015 *Saskatchewan* ruling enshrined what Justice Dickson said several years earlier. What we clearly, absolutely and specifically know today is that the right to strike is recognized by the Constitution in Canada. In fact, it is protected under section 2(d). Therefore, in this case there is a substantial infringement. Eliminating the right to strike is automatically a substantial infringement. It cannot be done without justification in a free and democratic society, as you stated so clearly, senator. At this time, economic considerations

are being cited. I am not saying that we cannot discuss economic considerations and that they are not important. However, in our country, the right to strike was recognized a long time ago. In 2002, in *Pepsi-Cola*, the Supreme Court ruled as follows:

... our society has come to see it as justified by the higher goal of achieving resolution of employer-employee disputes and the maintenance of economic and social peace. The legally limited use of economic pressure and the infliction of economic harm in a labour dispute has come to be accepted as a legitimate price to pay to encourage the parties to resolve their differences in a way that both can live with

That applies when a strike is completely legal, as this one is. The issues of essential services and danger to the public have already been codified in the Canada Labour Code. These issues were also the subject of hearings before the CIRB, and a decision was rendered in June 2020. The issue that remains today is economic pressure. I would be lying if I said that a strike doesn't serve to exert economic pressure. The purpose of a strike is to help workers, those who are vulnerable in the dispute, and to make sure that there is some balance so that workers can negotiate better working conditions.

Since the bill was passed by the House of Commons, what we are asking the Senate today is to change things and to scrap the protection granted by the Constitution and by section 2(d) for financial reasons. It is important to remember that, in addition to the Maritime Employers Association, which is an entity that exists under section 34 of the Canada Labour Code, the longshoremen's real employers are five shipping companies that form a board of directors and that earn billions of dollars in profit. This is not a system where anyone on the employer side is suffering, far from it. That doesn't mean that economic pressure is something trivial or unimportant. However, the decision that you need to make on the constitutional aspect of the case requires you to examine the facts from a Charter perspective. You are the guardians of the Charter. You are the guardians of those values that apply to all Canadians. It would be too easy to ignore all of that. Here are the constitutional principles that are at stake.

[English]

Senator Lankin: Mr. Morin, I'm sorry to interrupt you. I would like to continue on with a question.

The 2020 Canada Industrial Relations Board decision took note of the fact that the union has committed to process any kind of goods that are destined for Newfoundland, because of the understanding of the critical nature of ferry passage, and would unload any ship with respect to goods to Newfoundland. You have offered this for pandemic goods.

The employer I spoke to two days ago indicated that when they asked the union in the last strike to unload something, the union did so when it was within the parameters of those agreements and the offer the union put forward. They indicated there weren't many cases of that because of the logistics issues, and we've spoken about that.

[Mr. Morin]

For me, it's not who did what or the good offer was there and there's good faith on both sides, it's the fact that we are essentially down to an argument of economic harm to prevent a strike. There is no strike that I'm aware of, particularly in the private sector, where the goal of a strike is, not to harm the economics of a country, but to bring financial pressure on the employer. The balance needs to be there.

The Canada Industrial Relations Board decision very clearly sets out, after looking at all of that evidence, that it would irreparably harm the right to strike of these dockworkers if all goods were deemed essential, which is essentially what the back-to-work legislation does — "This is too much harm and this is essential work. You need to go back to work." This stretches far beyond what any of the court decisions or Industrial Relations Board decisions have granted in the past.

I also want to know if you're aware of the fact that the government has brought forward in Bill C-14 a provision that would allow them to use regulations —

The Chair: Senator Lankin, I'm sorry, your 10 minutes have expired. We have to move to the next senator.

[Translation]

Senator Dagenais: My question is for Mr. Murray. Thank you for accepting the invitation. I would like you to tell us about the atmosphere in the workplace during negotiations. How has that atmosphere evolved since 2018? The situation we're in now, this special legislation, did you see it coming?

Mr. Murray: To be perfectly honest, I didn't expect special legislation. The employer implemented economic measures against our dockworkers not once, but twice. We demanded that the employer drop those economic measures, and we offered to drop our strike measures, which we took in response to the employer's economic measures. We haven't received an answer yet. If the employer had responded, the port would've been back up and running seven days ago, and we wouldn't be discussing special legislation today. As for the atmosphere, it's obvious that

[English]

Senator Plett: Madam Speaker, the interpreter is saying she cannot interpret, so we cannot hear anything.

The Chair: We will pause to test the system. Thank you, Senator Plett.

• (1330)

[Translation]

The Chair: We'll move on. We still have eight minutes and 45 seconds in this round of questions.

Mr. Murray: In answer to your questions about the atmosphere in the workplace and at the bargaining table, I feel that it is respectful, as it always is between the parties. I have to say that the problem has been ongoing for years and has to do with the length of time it takes to negotiate collective agreements. We don't have the real decision-makers at the

bargaining table. The shipping companies aren't there. The chair of the board of the Maritime Employers Association isn't at the bargaining table. This is my fourth round of negotiations, and I've seen a chair of the board sit down with us so we could —

[English]

Senator Plett: Madam Chair, the interpreters are saying they can't hear this.

The Chair: Senator Plett, we are listening to the English translation, and we are hearing it at this end. I see Senator White saying he is receiving it also, so maybe, Senator Plett, you could —

Senator Plett: Chair, it's not that. The translator said the volume is too low to translate. It's not me; it's the translator who said that.

The Chair: Okay. Are you receiving the translation, Senator Plett?

[Translation]

Mr. Murray: The mood at the bargaining table is good. The problem has more to do with the length of the negotiations, and it's always the same thing, specifically, that we are not sitting down with the real decision makers, which are the five large, multi-billion-dollar shipping companies, as my attorney told you earlier. Accordingly, it's not surprising that it takes two or two and a half years to negotiate a collective agreement in our industry.

Senator Dagenais: I would like to follow up on that. We've heard a lot about the problem of working hours. What are the demands on the employer's side? We understand that working conditions have included working 19 out of 21 days, and there has been much talk of work-life balance. Prime Minister Trudeau even mentioned it. I suppose he must understand the situation. I will let you answer that.

Mr. Murray: That is one of the union's main issues. Without getting into the details, we submitted proposals at the bargaining table that would ensure better work-life balance for our members. It was about breaking the famous 19-21-day cycle. Those who got less work would in turn take a pay cut. We never called for equal pay for these demands. The employer said that it would need a certain number of employees to fill in for people going on leave in order to achieve better work-life balance. We believe we met management's demands. Unfortunately, the employer still thinks that the status quo on working schedules is the best solution, or it is making proposals that would apply to very few of our members. As far as we are concerned, there is a lack of willingness on the part of management to improve work-life balance. I have to tell you that the change in working schedule that the employer announced is the opposite of the work-life balance we were seeking. This is a direct attack on the rights of our longshore workers. That's why we sent out the notice of an unlimited general strike. If the employer reinstated the schedules we had on April 9 — and are virtually always used by shipping companies, whether there are one, two or three ships in port — we would not be discussing special legislation this morning.

Senator Dagenais: As you mentioned, five shipping companies are the employers and, if I understand correctly, they care more about profit than the interests of the workers. The strike is apparently costing \$25 million a day. Is there some truth to that, or is this something that these shipping companies, the employers, have made up?

Mr. Murray: Senator Dagenais, I don't know if that figure is correct, but let's assume it is. It is apparently costing \$25 million a day. The union submitted a proposal to the employer, who will testify later, seven days ago, and for those seven days the employer has been silent on the union's offer, which was contingent on the employer's lifting the measures it took against us. We were prepared to stop our strike immediately. In the past seven days, there has been no accountability for the \$25 million in potential losses per day, and the employer has remained silent. Otherwise we would not be looking at special legislation. The port would have been open for the past seven days if the employer had simply responded.

Senator Dagenais: I would like to get back to the offer that your dockworkers made to the employer to maintain essential services.

Mr. Murray: On the issue of essential services, grain is already covered under the Canada Labour Code. We made a commitment to the Canada Industrial Relations Board that we would continue to serve Newfoundland and Labrador in both directions, and we have honoured that commitment. Every day the longshoremen were on strike, we kept that commitment, and the work continued seamlessly. The province of Newfoundland and Labrador has never been affected by this strike. In addition, without any obligation on our part, given the pandemic, we offered last summer, as we did this year, to allow the employer to use longshoremen to unload containers of medical supplies, if necessary, that were at the port in Montreal. We have not received any requests of that nature over the past seven days. Last year the employer sent us a list of 366 containers, but when we looked a little closer at the contents, we found that there were pears and chocolate, which unfortunately are not related to the pandemic.

I would add as a final point, and you can confirm this with the Canada Border Services Agency, 93% of all medical supplies, including vaccines, enter the country through air services at Lester P. Pearson Airport. Therefore, when you hear that a lot of medical supplies are stuck at the port in Montreal, I can tell you that the employer has not made any such request to us for seven days. I can only assume, then, that there is none.

Senator Dagenais: Isn't management's refusal to meet with you a strategy to inevitably lead you toward special legislation? We have seen that in other negotiations. The union acts in good faith, but sometimes management remains silent knowing that there will be special legislation and that someone else will settle the collective agreement in its place.

Mr. Murray: Unfortunately, Senator Dagenais, I have to say that I agree. With all due respect to Minister Tassi, as soon as she announced her bill, even though we had already offered to end our strike if the employer dropped its changes in order to get the

port up and running again, the fact of the matter is that the employer did not budge and had no intention of negotiating because of the special legislation.

• (1340)

I can tell you that we asked that these two measures be reset to what was in place on April 9 and, as we speak, I do not even know, in the event that our members are forced back to work by special legislation, if the men and women we represent would have the same work schedules that were in place on April 9 and which in practice are still being used. This is a mystery to me.

Even if the employer says that it has the right to use them under the collective agreement, these schedules are virtually never used, unless it is to punish the dockworkers. I am going to wait for an answer. I put it to the minister and the Prime Minister, but I would like to know if the conditions that existed on April 9 will be reinstated.

Senator Dagenais: Thank you very much, Mr. Murray.

Senator Dalphond: First, I would like to thank Mr. Murray and Mr. Morin for being here with us today. It's important to hear the parties' perspectives directly from them, and not through the media, which can sometimes paint an incomplete picture.

To pick up on Senator Dagenais' excellent questions, I would like to ask about the changes that were imposed by the employer on April 9, without discussion and unilaterally, if I understand correctly.

From what I understand, one had to do with a change to work schedule policy and the other related to guaranteed hours. Can you clarify this further?

I also have a second question for you right away. Does the special legislation, if passed, restore the collective agreement as of January 1, 2019, which will require the employer to pay the guaranteed hours?

Mr. Murray: With regard to guaranteed hours, Senator Dalphond, that is a trade-off that has existed for 50 years thanks to the absolutely incredible availability of longshore workers. What they get in return is the job security that is the cornerstone of our collective agreement.

From what I understand, the employer was going to comply with that provision should special legislation come into effect. However, we do not have any guarantees that the employer will comply with the working schedules, which were uninterrupted schedules that were used 99% of the time, even if there were only one or two ships in port. I do not have any answers on that.

Like you, I, too, read the bill where it talks about the extension of the collective agreement. I would also like to add that, if possible, should you pass this bill, honourable senators, you should add to section 6 that the working conditions and scheduling practices that were in effect at the Port of Montreal on April 9, 2021 — so before they were amended by the employer — should continue to be applied in order to protect the men and women that our union represents.

If you were to pass this bill, it would be the best way to protect those men and women, so that the employer does not continue to punish the people we represent after they are forced back to work. If back-to-work legislation is passed, although that is not what we want, there would have to be a period of mediation afterwards, and this would have to be done in the best possible conditions.

That is why we are asking you to make this addition to section 6, in the event that you pass the bill, so that after the extension of the collective agreement, the employer will comply with the working conditions and practices that were in effect on April 9.

Senator Dalphond: This is my third question.

You say that you are dealing with an association of employers that is rather absent and sends public relations people to the table, but that the real decision makers are not there. I noticed that they haven't appeared in the media, as we haven't seen them. I really want to hear what they are going to say to us in a little while because they have virtually stayed silent. We have heard from the Minister of Labour, we have heard from the government and you, but we have not heard from them. It leads me to believe that you are right when you say that they are rather discreet and even absent.

In this situation, couldn't arbitration be the means of obtaining, through a decision imposed by a third party, solutions that these absent employers are not really interested in coming up with?

Results might be achieved more quickly with arbitration than by waiting on these people for years.

Mr. Murray: It all depends on the outcome, senator. With all due respect, imposed agreements leave lasting scars. It's an admission of failure if the employer doesn't manage to reach an agreement with the Montreal Longshore Workers' Union, which many employer associations have managed to do in the past. This isn't the first time. We've been part of the Port of Montreal for 100 years, and there have been lots of collective agreements. This would be an admission of failure for this employer.

Depending on the outcome, with all due respect, when a collective agreement is imposed by a mediator-arbitrator, that leaves lasting scars, and I have to say it will also do lasting damage to the hearts and souls of the men and women we represent. It could affect their resolve to go back to work with a positive attitude.

When things get so bad that a mediator-arbitrator has to impose a collective agreement, that's kind of an admission of failure, and I'm not sure these people will hold on to that sense of pride in working for this employer. I do know that they've been proud to be represented by their union, but I'm not sure they'll feel quite as proud to work for this employer.

Senator Dalphond: If arbitration sides with the union, I imagine that the employees will be proud of the work the union has done.

[Mr. Murray]

Has there ever been special legislation in the past 100 years, or is this the first time special legislation would be passed for the Port of Montreal?

Mr. Murray: The last time there was special legislation was in the early 1970s. If we're talking about ports, two special bills were passed for the Port of Vancouver. There were massive complaints about both bills from the International Labour Organization, which described them as unconstitutional. I might add that neither special bill passed by Conservative governments for the Port of Vancouver can be found in the House of Commons legal corpus anymore.

Senator Dalphond: All right. I will leave the three minutes I have left to my colleague, Senator Mercer. Thanks again for being here, Mr. Murray.

[English]

Senator Mercer: Thank you for being here today. Other ports in this country have labour issues, some worse than others. The Port of Halifax, for example, seems to be doing well and has consistently had labour and employer peace. Is there no way to learn from other unions and other employers how to help make this work? Montreal is not the only port in Canada, of course, and it may have different working conditions, but surely pay equity and scheduling should be equal across the country. Why does this continue to be a problem?

[Translation]

Mr. Murray: I don't think that the parties' salary considerations have been heard yet at the bargaining table, but as far as demands are concerned, I can say with confidence that —

[English]

Senator Plett: Madam Chair, if I could intervene — and you'll have to stop the clock here — I don't know whether you are not getting it, but we are constantly having the translator tell us it's inaudible. I'm not sure where in the chamber you're getting translation when we are not getting it here. It is unfair that many senators are not able to hear what the witnesses are saying. We need to correct this problem before we can continue.

The Chair: I believe that the problem is with the transmission that we are receiving and that the translator is receiving. It's not from our end. It's from the sender's end.

Senator Plett: Madam Chair, I apologized to you when I say this: I don't care whose problem it is, this is a question of privilege. I am not hearing what the witnesses are saying, so if we cannot fix something in 2021 when we are wanting to do these types of virtual meetings, then either we stop this procedure or we fix the problem, because I am calling this on a question of privilege. I cannot understand what's going on.

• (1350)

[Translation]

Mr. Murray: I think the question was about pay and equity at the various ports.

What I can say about equity is that pay is not a real issue at the bargaining table. However, the union's proposal was in line with the pay increases that were approved in both Vancouver and Halifax.

Furthermore, the employer's offers at the bargaining table have been lower than the pay increases that were approved in Vancouver and Halifax.

[English]

Senator Mercer: Chair, prior to my relinquishing the floor, I have to agree with Senator Plett. We have other witnesses coming up later this afternoon. If we're going to have the same problem, the inability of the interpreters to do their work will just go on. They are not the problem. It's the sound that is the problem, so I hope that our technical people are looking at the next set of witnesses, who will also be appearing remotely, so that we don't have the problem as we continue.

That is the balance of my time. Thank you.

Senator Plett: All right. I want to ensure that my volume will be high enough for everybody to understand in both official languages.

Senator Mercer: It always is.

Senator Dalphond: No problem there.

Senator Plett: First of all, let me say, welcome, gentlemen, to the Senate of Canada and the problems related to this type of meeting. We appreciate your indulgence and hopefully your understanding.

My first question is around the mediation that the bill proposes. The bill proposes that mediation would last for 14 days with the rights of the parties, by agreement, to extend for another 7 days, for a total of 21 days, in which all outstanding issues could be decided through the mediation process. This is what the bill proposes. How optimistic are you, gentlemen? Are you optimistic that an agreement can be reached in that period of time? What is your general perspective on the specific provisions in this bill related to the mediation and potential arbitration processes?

[Translation]

Mr. Murray: I will repeat that, ultimately, we would definitely rather not have special legislation regarding the men and women we represent.

We mentioned the reasons earlier. If the employer had accepted our offer asking it to rescind these measures, we would have withdrawn our two strike notices, and we would not be here discussing special legislation.

That said, regarding the number of days and the process with the mediator-arbitrator, we want to congratulate the parties, such as the Conservative Party, that adopted amendments to the bill and got the phrase "last best offer" removed. This amendment was made in the House.

For your information, I also want to point out that even though this amendment was adopted, the changes have not yet been made to the bill you have. There is an error in paragraph 15(1) (c), which still contains the words “final offer,” even though the NDP’s amendment, which was supported by the Bloc Québécois and the Conservative Party, removed the words “last best offer” from the bill.

However, senator, everything depends on the arbitrator who is appointed. The parties can submit a list of names based on the experience required. The longshore industry is unique. We need to find people who are familiar with it and understand it within a very short timeframe. We have our own special language, with characteristics that are specific to the longshore industry. That being said, if the senators pass this bill, which we hope they will not, could they consider appointing assessors for each of the two parties to help the mediator-arbitrator better understand the situation?

Not many people in Canada have the privilege of fully understanding the nature of our industry. The CIRB is very familiar with the longshore industry because it had to render decisions on it several times.

What’s more, senator, there are very few arbitrators who are familiar with our industry and who could, in a very short timeframe, help the parties agree on a collective agreement or, ultimately, render a decision that would apply and serve as a collective agreement.

[English]

Senator Plett: Thank you. The minister has told us that the strike action you initiated came about pursuant to the employer’s actions on April 22 advising the union that it had imposed a specific shift schedule requiring workers to work an entire shift. Following that, the union gave notice of an intention to stop all work. This is the minister speaking, not me.

I understand that you believe you were responding to provocations from your employer. However, did you consider or weigh the broader implications of your work stoppage on Montreal and the Canadian economy when you took your decision? What responsibilities do you believe you, as a union, have toward other Quebec and Canadian workers during this time of a national crisis?

[Translation]

Mr. Murray: Senator Plett, with all due respect, of course we considered that, since we told the employer that if it retracted this schedule change, we would immediately withdraw our strike notice.

Of course we considered that. We have been saying for seven days now that if the employer had maintained the working conditions we had on April 9, in terms of both job security and scheduling, we would not be here today. There would be no special legislation, the port would be operating normally, and we would still be at the bargaining table.

[Mr. Murray]

Again, for seven days, we have been asking the employer to restore the working conditions and practices that were in place on April 9.

As far as the pandemic is concerned, and at the risk of repeating myself, we were under no obligation, since the CIRB decision made it clear what constitutes essential services. From a humanitarian perspective, given the pandemic and with no obligation on our part, the longshore workers’ union said it would take care of containers with supplies related to the pandemic. Of course we are concerned about the pandemic, and we recognize that these are extraordinary times. As an exception, and without expecting any thanks, we were prepared to mitigate the circumstances of this unusual time by unloading medical supplies at the port, if need be.

• (1400)

[English]

Senator Plett: Thank you. I appreciate that answer. Since you used the phrase “with all due respect,” let me tell you there is no ill will intended in any of my questions. We are clearly trying to get to the bottom of some situations here.

[Translation]

Mr. Murray: I said, “with respect,” Senator Plett. I’m sorry.

[English]

Senator Plett: The Prime Minister represents a riding in Montreal, and he has never bothered during this time to intervene in this conflict, never tried to find a solution.

So give me an opinion here. In your opinion, why was the Prime Minister so passive in this conflict? Why does he appear to be uninterested in the future of the Port of Montreal?

[Translation]

Mr. Murray: With respect, Senator Plett, you’re putting me in an awkward position by asking me to comment on a political issue. I feel I have to point out that, ultimately, if you pass the bill we are asking you to reject, and if the parties don’t reach an agreement, it’s the Liberal government that will assign an arbitrator to our case. For that reason, I hope you don’t mind if I avoid your question.

However, if Prime Minister Trudeau were to call us up, as we’ve invited him to do, or if he were to call up the employer and ask it to revert to the employment conditions and practices that were in place on April 9, before the employer took economic measures against our employees, I would be honoured to speak with Prime Minister Trudeau. I would tell him that, if the employer drops its measures, we will drop our two strike measures. Then the port could reopen, and there would be no need for special legislation. I would be pleased and honoured to speak with Prime Minister Trudeau in that case.

[English]

Senator Plett: Thank you. Well, let me just suggest that, ironically, we all become politicians when we're here. Some of the questions that are being asked are political, and some of the answers we're receiving also border on being a little political, again, with all due respect.

The minister has stated that permanent diversions to the U.S. ports are likely due to the strike, and these will have long-lasting negative effects on the integrated transportation system around the Port of Montreal. How concerned is your union about that? Do you anticipate that it will impact the numbers of people working at the port in the future?

[Translation]

Senator Miville-Dechêne: Thank you, gentlemen, for being here to answer our questions. I'd like to go back to your statements about the economic consequences. Of course this strike is legal. The courts have confirmed in their decisions that the right to strike can't be taken away when there are economic repercussions, and I recognize that. However, you didn't mention that the present economic repercussions are not the same as those assessed when the courts examined this in the past. We are in a pandemic. Small businesses, with just a few people running them, are on the brink of bankruptcy. They have been struggling for a year and are waiting for their materials. I'm not talking about medical supplies, but rather all kinds of goods that allow businesses to keep their heads above water.

I'm asking you a difficult question that's not about whether it's legal for you to strike, but rather whether it's right for you to strike at this very unusual time. Court decisions can't explain everything, nor can the current context of this strike.

Mr. Murray: We actually are concerned about the economic considerations. At the risk of repeating myself, for the past seven days, we have been asking the employer to withdraw the two measures affecting our dockworkers. We represent the men and women who work at the Port of Montreal under certain working conditions. The employer was the first to hit our dockworkers with economic measures in an attempt to influence the bargaining. We had no choice but to go on the defensive in response to those measures. We are so concerned by the situation that we have been asking the employer for seven days to rescind the measures so that we can rescind ours. Had this happened, operations at the port would have resumed immediately.

Senator Miville-Dechêne: I understand your dispute and also the fact that you're dissatisfied with this unilateral change to the working conditions. However, the impact is not limited to the economic interests of big business. It's also affecting self-employed workers and many people. How can you justify this strike? I understand that you're doing it for your workers, but the strike is hurting many people in our society. That is what I am asking you.

Mr. Murray: Are you asking our people to sacrifice themselves and accept working conditions that aren't right?

Senator Miville-Dechêne: The strike could be postponed until after the crisis. All kinds of things could be done.

Mr. Murray: If the employer had been open to discussing the possibility of postponing the strike and all kinds of things, it would have responded to our offer seven days ago. We are well aware that these are extraordinary times. We offered to take care of containers of medical supplies, if there were any at the Port of Montreal, and we had no obligation to do so.

Senator Miville-Dechêne: It's not about medical supplies. A great many people are suffering. I will cede the rest of my time to my colleague.

Senator Saint-Germain: Hello gentlemen. Mr. Murray, I was surprised by something you said yesterday, and I quote:

We will contest the validity of this bill before the courts, and we have already filed a complaint with the International Labour Organization.

I will not dwell on how long it could take the International Labour Organization to render a decision. However, I'm trying to understand your logic. If this bill is passed and receives Royal Assent, you're saying that the employer hasn't responded to you in seven days and has ignored many of your demands. However, the bill would also force the employer to sit down at the table and engage in mediation.

I'm trying to understand how this would serve the interests of the workers you represent and the interests of the public. The bill was called for by the Government of Quebec and fully supported by the Government of Canada and the House of Commons. I'm trying to understand your logic as to why you would contest a bill that is passed in a democratic way.

Mr. Murray: In a democratic context, the Charter provisions apply. We believe that this law is unconstitutional and would not pass a court challenge. The courts won't be getting the union's complaint first thing tomorrow morning. First of all, we believe the bill is unconstitutional. That's why I said we would challenge it, just like the Canada Post Corporation workers challenged the special legislation that forced them back to work, and just like other workers in Canada have challenged special legislation. We can just look to Government of Quebec legal experts, who received a Court of Appeal decision three weeks ago.

That said, aside from the constitutionality issue that the courts will have to rule on, what we have been saying since the start of this meeting, where you've given us the privilege of speaking to you, is that special legislation would not be necessary if the employer reinstated the working conditions and practices that were in effect on April 9. The strike would end immediately.

• (1410)

We are directly in the eye of the storm, and the longshoremen's union is being blamed, whereas, in my view, the employer is getting off easy in terms of its responsibility to remove the two measures it imposed and continue to apply the practices that were in place on April 9.

At the risk of repeating myself, I hope you will amend the bill to restore the working conditions and practices that were in place on April 9. The employer is getting off easy in terms of the role it has played in creating the situations we find ourselves in. I would remind you that we were not the first to draw. The truce ended on March 21. At no time did the longshoremen's union send out a strike notice. At no time have we sent out strike notices since the truce ended on March 21, 2021.

Senator Saint-Germain: In that case, why not trust mediation, which would also force the employer to come to the table and get you some answers?

Mr. Murray: Can you assure me, senator, that the working conditions that were in effect on April 9 . . . What will the working conditions of the people that the union represents be if you force them to go back to work? That leaves me with two options —

Senator Saint-Germain: Where is the public interest in this?

Mr. Murray: We have been taking into account the public interest for the past seven days, senator. We are asking the employer to withdraw those two measures and, if it does, then we will stop our strike.

Senator Saint-Germain: Why not trust a mediator to make a determination about the public interest and assess the interests of the employer and employees?

Mr. Murray: With all due respect, senator, I will repeat that none of the provisions of the bill ensure that the longshoremen I represent are able to return to work under the same working conditions and scheduling practices that were in effect on April 9. If you are telling me that you will amend the bill and add a provision that will enable the working conditions and practices that were in effect on April 9 to continue to apply, then I would look and consult —

Senator Saint-Germain: We are not here to negotiate a collective agreement. It's the mediator's job to arbitrate the dispute and come up with an agreement that is in the best interest of all the parties.

Mr. Murray: No, no, I'm sorry, but you are forcing people back to work, and I don't even know what kind of working conditions they will be going back to. I'm not negotiating. It's Parliament and, ultimately, the Senate that are forcing the men and women I represent back to work. I am just saying that there is a big unknown when it comes to the working conditions our people will be going back to.

Senator Saint-Germain: I was getting to your analysis of the impact of the work you do on people and businesses in a pandemic context. What is that impact?

Mr. Murray: I don't understand your question, Madam Senator.

Senator Saint-Germain: Are you not underestimating, especially in the context of the pandemic, the major and significant impact of the work done by your union members as an essential service?

[Mr. Murray]

Mr. Murray: A court has already addressed this matter, senator, but no, we are not underestimating it, since it has been seven days since we made the offer to reopen the port to the employer.

Senator Saint-Germain: Good luck and thank you.

[English]

The Chair: Honourable senators, the witnesses have now been with us for 65 minutes. In conformity with the order of the Senate, I am now obliged to interrupt proceedings.

Mr. Murray and Mr. Morin, on behalf of all senators, thank you for joining us today to assist us with our work on the bill.

Hon. Senators: Hear, hear!

The Chair: I would now invite the next witness to join us.

(Pursuant to the Order of the Senate, a representative of the Maritime Employers Association joined the sitting by video conference.)

The Chair: Our next witness is from the Maritime Employers Association. I would invite you to introduce yourself and to make your introductory remarks of at most five minutes.

[Translation]

Martin Tessier, President, Maritime Employers Association: Honourable senators, thank you for the opportunity to speak to you today about the extraordinary situation at the Port of Montreal and to answer your questions.

My name is Martin Tessier and I am the president of the Maritime Employers Association. The MEA is the employer of the longshoremen and checkers in the ports of Montreal, Trois-Rivières/Bécancour, Hamilton and Toronto. It hires, trains and deploys employees, and it negotiates and administers collective agreements.

[English]

The MEA is the employer pursuant to section 34 of the Canada Labour Code.

[Translation]

First, allow me to reiterate how much respect I have for the men and women who do the longshore work and checking. They are an important link in the logistics chain and that is why they were designated as essential workers by the various governments in the context of the global pandemic. The Port of Montreal is a public institution that offers an essential service to the public.

[English]

First, let me tell you that we did everything within our power to reach a negotiated agreement. After 30 months and more than 120 days of negotiation, with the support of four different mediators, while facing violent events and after a truce of seven months, we need to face the truth: We are at an impasse.

Let me be clear. This bill is not a victory.

[Translation]

It is a failure of negotiation. None of the witnesses before you feel like celebrating today. The MEA made every effort to reach a negotiated agreement. Over the course of the many meetings, we made several counter proposals and accommodations, including on the issues the union publicly identified as a priority. I say publicly because, in reality, the situation was quite different behind closed doors. For example, there was the initiation of strike action in August 2020. Allow me to quote a decision made on March 17 by the Canada Industrial Relations Board about that:

The CIRB finds it difficult to look favourably upon the fact that the union called a strike in August 2020 before providing the employer the necessary details of its demands and without presenting its monetary and wage demands. In our view, this seems irresponsible and inconsistent with a reasonable bargaining process.

[English]

The last August strike represented a loss of \$600 million for our economy. Even more, it took us almost three months to get back to normal.

[Translation]

The MEA did everything it could to reach a negotiated agreement. Despite the many meetings held by the parties, our positions are too far apart. I want to take this opportunity to thank the Federal Mediation and Conciliation Service for its assistance and hard work, especially Audrey-Mélissa Therrien, Robert Bellerose and Peter Simpson.

[English]

Despite all those efforts, we are far from an agreement. Even with the mediators trying to facilitate an agreement, the parties are no closer. In the meantime, our industry and the Port of Montreal are suffering.

[Translation]

The anxiety and the uncertainty have an impact on the market, and the our volume of goods is dropping.

[English]

And one thing is for sure: no bookings, no port.

[Translation]

Thousands of SMEs depend on the Port of Montreal, as do factories and workers. The health and safety of Canadians is at stake. Tests, PPE, pharmaceutical ingredients and other medical supplies arrive in Canada through the Port of Montreal.

In closing, I would like to repeat that although this bill is necessary, it is not a victory for anyone. All the witnesses appearing before you today would have preferred another outcome, but we are at an impasse.

• (1420)

[English]

This failure to reach a negotiated agreement needs to be addressed immediately. In exceptional times and circumstances, we need exceptional measures.

[Translation]

Rest assured that the MEA still wants a negotiated agreement.

[English]

We are committed to negotiating an agreement, and will put all our energy towards reaching this goal.

[Translation]

The union claims that the MEA left the bargaining table. This statement is utterly false. The mediators proposed an approach that was unprecedented and without prejudice to bring the parties closer. This approach did not work, unfortunately.

We then told the mediators that we would be unable to meet the union's demands. We also told them that we would have to consider our options and that we would continue to be available for negotiations.

Thank you in advance for your consideration of this issue. I will be pleased to answer your questions.

Senator Carignan: Here's my first question.

I asked Mr. Murray this question earlier, and I quoted an excerpt from the Canada Industrial Relations Board's decision listing all the goods that were in transit or in limbo, including medications, fertilizers, explosives, foodstuffs and perishable goods. We are talking about a variety of products that could be dangerous for human life, safety and security, and the environment, depending on how they are handled and stored and the standards.

Can you explain the nature of the goods that transit through the port and tell us what might happen if these goods are left sitting at the port or redirected elsewhere for transportation?

Mr. Tessier: First of all, thank you, senator, for your question. As I am sure you know, 85% of consumer goods in Quebec, Ontario and the U.S. Midwest transits through the Port of

Montreal. Many products are being held hostage and cannot transit, cannot be transferred, whether it be food, explosives or medical equipment.

Although the union is saying that it will move the medical equipment, things are not as simple as that, because it is difficult to locate that equipment. Yes, it is true that the representatives said that they would do it, but this is having a major impact on all products that transit through the Port of Montreal. Right now, they are not even coming to the Port of Montreal.

To answer the other part of your question, when companies decide to ship through another port, it could mean that those goods do not come back to Montreal because new consumption habits may be formed. It's like us during the pandemic. We changed our consumption habits and routines. We went to one store rather than another, and we will probably maintain those habits. That is the one of the risks we are facing at the Port of Montreal.

Yes, there are effects related to the pandemic, but there are also all of the other effects on the goods that people need in their day-to-day lives.

Senator Carignan: We are hearing more and more the union and some analysts say that, basically, you have been maintaining your position a bit more strongly and dreaming of special legislation. I am not the one who is saying that. Do you want special legislation so that you have more leverage? Do you have anything to say about that?

Mr. Tessier: Once again, thank you for the question. It's an excellent question.

I was hired by the MEA to improve labour relations. I'm trained as a negotiator. The worst thing that can happen to a negotiator is special legislation. That's the worst thing. No one wants a third party to be making the decisions. We are at an impasse.

At the risk of repeating myself, as I said in my speech, this has been going on for 30 months and more than 120 days. There were rotating strikes last summer that were described as irresponsible and unreasonable because the union had not submitted its financial demands. We have a number of demands, and the union is still proposing three or four major demands, but I can tell you that there's much more than that. We're very far from the finish line. This is the last resort. We didn't want to end up with special legislation.

However, now we have the support of a full-time mediator and two super mediators, and we still have not managed to come to an agreement. These people have been with us since February 6, but we haven't managed to come to an agreement in spite of their efforts. I don't think we were expecting special legislation. That is not what we want. Special legislation has become necessary under the current circumstances to protect Canadians.

The point we have reached today is not where we want to be as an association. We are the longshoremen's employer. Basically, I am like an employers' union. Therefore, when Mr. Murray says that I am a human resources drone and that we are sending public relations people to negotiate, that is simply not the case. I have

the same role as Mr. Murray, I have as much power as he does, and we are the ones who make the decisions at the bargaining table. As for the five shipping lines — and it is not just the shipping lines, terminal operators also sit on our board of directors — they give us our mandate, and we make decisions within that mandate, as the union does when it makes its decisions.

We most certainly do not want special legislation brought in, when we have already started negotiations. However, we must face the fact that we have had the support of a special mediator for over 30 months now, and we are still far from an agreement.

Senator Carignan: You went to the Canada Industrial Relations Board for a ruling on what constituted essential services. The hearing took 20 days and a huge amount of energy. Lots of witnesses appeared. It took a year and a half. You lost a year and a half to that process. The board rejected your "immediate and serious danger to health" claim. We agree that there is a danger, but the issue is with the "immediate and serious" part.

Do you believe the government should have amended the Canada Labour Code to expand the notion of an essential service, amend the criteria and do what was done for grains? The amendments that have to do with grains came about because of port strikes, when a small group held an entire economy, an entire sector, hostage by striking. That tilted the economic relations playing field in its favour. The issue was addressed by amending the Canada Labour Code. Do you think the government should have amended or ought to amend the Canada Labour Code?

Mr. Tessier: Once again, thank you for the question. I'm not the government, but as I said in my speech, I consider the Port of Montreal to be an essential public service. Should the government amend the laws to protect that? I'll leave that up to them. We spared no effort in our attempts to protect Canadians from a work stoppage at the Port of Montreal. We abide by the decisions of the court and the CIRB.

Unfortunately, less than three weeks after the decision in favour of the union, on June 29, strikes began at the Port of Montreal. After that, there were rotating strikes, followed by an unlimited strike from August 10 to 21.

Senator Carignan: Mr. Murray repeatedly mentioned reinstating the collective agreement conditions and related practices that were in effect before April 9. He stressed that and used the expression "related practices" at least a dozen times during his testimony.

Can you explain what happened? Did you change a practice or decide to apply the collective agreement to the letter? Is that what's problematic for the union?

Mr. Tessier: Extraordinary times call for extraordinary measures. Under our collective agreement, we are allowed to use regular schedules, as they're known, which require employees to work seven hours a day. Because we had a weekend strike, we waited until after the week of the weekend strike, and we

couldn't meet our staffing needs in the days that followed. So, on April 22, we sent out a press release stating that we intended to use regular schedules beginning on April 26.

• (1430)

That's part of the provisions of the collective agreement. It's not a notice of a change in working conditions within the meaning of the Canada Labour Code. We have used that schedule in the past. The union even made a request to that effect at the bargaining table, and it was recognized that we have the right to use it, because the union wants us to remove that provision from the collective agreement. Obviously, that schedule isn't used very often. I agree with Mr. Murray on that. However, we are facing an exceptional situation. We are in the middle of a pandemic, and we are essentially shut down two out of seven days every week. We need greater operational flexibility. That's why we made that decision.

[English]

The Chair: Thank you. We will move on to the next senator.

Senator Lankin: Mr. Tessier, thank you for being with us. I want to express my appreciation again for the phone call you graciously undertook with me earlier this week.

I am primarily interested in the Charter compliance element of this legislation and not who is right or wrong regarding any of the issues that have unfolded. I want to ask one question with respect to that, just for clarity. In the exchange that you just had with Senator Carignan, you were speaking about the change in working schedule — hours of work — and the provisions within the collective agreement.

Did you also make changes with respect to job security provisions? Was there another measure you took beside hours of work? I understood there was.

Mr. Tessier: Yes, we did. On April 10, we sent a notice to the union saying that within the next 72 hours, we will change the working conditions about the provision on job security, which are wage guarantees.

Then, because we lost volume and despite the fact that the Port of Montreal and the union are not in agreement about the volume decrease that we had — 6% or 11% — we could all agree that such decreases would have a significant impact on employers or an industry. We can see that whatever volume decrease we experienced, all other ports in North America had an increase in volume. Based on this, and the fact that we are the only port in North America with job security and wage guarantees, it was not affordable for us, with the loss of such volume, to maintain such a disposition in the collective agreement.

So to answer your question, yes, we did.

Senator Lankin: Thank you. I just wanted us all to be clear that it was not simply a provision under the existing collective agreement that was acted upon. So I appreciate that.

In response to Senator Carignan, you expressed a view about the essential nature of the work of the port. In fact, the association expressed that view over almost two years of the

expert tribunal's adjudication of the issue around essential services. I appreciate that you believe they are essential, and I think you expressed that you believe they should be essential in terms of how the structure of the Labour Code operates, et cetera. However, the tribunal ruled that the case you made failed to have an evidentiary basis. I want you to confirm that this decision came out during the summer of 2020, which was during the pandemic.

I have a sense that, on the constitutionality of this, we're considering, and people have been talking about, whether there is right or wrong, how big the economic impact is, et cetera. Your understanding of the right to strike, the freedom of association and the Charter guarantees that exist and the limits of those, having been in this industry and having gone through the essential services hearing, is relevant to us as well.

Do you believe that the essential services designation you're talking about, which was rejected by the tribunal — that your opinion supercedes that and should somehow imbue the constitutional right for the government to essentially withdraw the right to strike and the freedom of association, which are Charter-guaranteed rights?

Mr. Tessier: Thank you for your question. Again, I'm not above the government or any legislation. Whatever I think, it is important to me, but I need to follow the rules. I need to make sure that I follow the regulations. That is why we challenged the decision of the CIRB, and we are waiting to see what our next steps are on this.

As long as the decision is there and it's not challenged or changed, I will comply with it. This is why we are where we are. I would never say that my opinion is more important than any legislation...

Senator Lankin: Okay. I understand that, and I appreciate it. That probably wasn't phrased in the easiest way for you to respond to.

Mr. Tessier: No problem.

Senator Lankin: My apologies for that.

The tribunal said that you're wrong on your arguments around essential services. You're challenging that. In the meantime, after essentially three days of strike, we have a government coming in and suggesting that these are essential services when we have had the expert tribunal say no.

So I'm stuck again around the constitutionality of this measure going forward.

If you're awaiting what was already a long period to get to a decision with all the witnesses that you brought forward — if you're awaiting an appeal of that — and the union is saying, "Get rid of that outside of the collective agreement job security provision that you have imposed, and the strike will be over and we can go back to work. We can continue to work out the protocols around the unloading that has been guaranteed," why is that not a useful way forward? One more decision out of the Supreme Court that strikes down essential services is not going to be helpful to you either.

Mr. Tessier: That's another great question. All of this started with last summer's strike. It was written in the CIRB decision that the strike was unreasonable. This created anxiety among all importers and exporters, and that was leading to uncertainty.

When people saw on March 21 that the end of the truce was coming, nobody wanted to get caught again in what happened last summer at the Port of Montreal, because it took us three months to get back to normal and relaunch the supply chain.

With those anxieties, we lost volume. By losing volume, it's bad. If we were to answer the union by saying we are going to remove our option of changing working conditions — the second one is within the collective agreement — then it would not work for us, because we will lose volume again.

There is something with your question I would like to bring up. Mr. Murray is always saying that we never responded to his demand, saying that "if we remove your two options, we'll remove the strike," but I have a document here that we have put. It's pretty simple. On April 25, the day before the general strike started, we said, loud and clear, that the reason behind the withdrawal of the income guarantee — in other words, not paying the hours that are not worked — still stands. Everyone is in agreement that there has been a drop in volume.

Regarding switching to a regular work schedule that consists of a change in the hours worked per shift from 5 hours and 20 minutes to 7 hours, that means simply adjusting to the impact of the partial strike. In order to maintain the flexibility of the supply chain and to protect the imports and exports of SME. Going on strike is one of the tactics available to the union. It is the union choice to proceed in this manner. Today, the Maritime Employers Association is preparing for the mediation session tomorrow.

Then, right after this, the union replied. Now they are saying —

Senator Lankin: Can you keep this short, sir? I won't get in another question.

Mr. Tessier: No problem. I'm going to finish with this.

[*Translation*]

The unlimited general strike planned for April 26 is being maintained because the employer has refused to set working conditions.

[*English*]

Then I think we did respond to the union's request. They said we didn't respond for seven days.

Senator Lankin: Thank you. I appreciate both sides being aggrieved and wanting to set the record straight.

I'm coming back to the constitutionality and the impact of back-to-work legislation.

• (1440)

In the CIRB decision, as I read it, they said these aren't essential services. There are other ports in Halifax, Hamilton — where you operate businesses as well — that these can be deferred to. We know some have gone through the eastern seaboard and up via trucking to deliver and you have lost volume, but the next time, the strike is in Hamilton or in Vancouver and they will lose volume as well. This is part of the balance of powers that are guaranteed in the Charter between employers and workers.

The question I would like you to answer is the logistics question that you described to me at great length. The problem with assuming that the volume will go to other ports and/or the logistical ability to remove containers from ships that come in. If you could respond to that. Thank you.

The Chair: Senator Lankin, there is no time left in your 10 minutes. We now have to move to the next block of 10 minutes.

[*Translation*]

Senator Dagenais, you will share your time with Senator Griffin.

Senator Dagenais: Mr. Tessier, I will ask a very direct question. I am always very annoyed when workers' salaries and overtime pay are publicly disclosed with the intent to denigrate workers. Do you feel that dockworkers are overpaid?

Mr. Tessier: I never said that dockworkers were overpaid.

Senator Dagenais: That is not what we hear in the public arena. My second question is, that is not what you've said. You have been chosen by the maritime employers to represent them, as you yourself have said. As we heard from the union representative himself, you have not been seen at the bargaining table. Does that seem normal to you? I took the time to read your notice of appointment by the MEA from July 2020. It says that you have a wealth of experience in labour relations and that you are very human relations oriented.

Isn't it unusual that you're not present at the bargaining table?

Mr. Tessier: First, I have been present for nearly three weeks now. Second, it is not my role within the association to be present at the negotiations. Here are some examples. We signed a nine-year collective agreement in Trois-Rivières, and I was not present. In September, we signed two collective agreements in Toronto and Hamilton in three days, and I was not present. Local 1657 in Montreal, which represents the checkers, held negotiations, and I was not present. My role is to liaise between the board and the bargaining team, and my bargaining team is fantastic. I have a vice-president of industrial relations who manages a bargaining team, and it is the team members who are doing this work right now.

The Maritime Employers Association is said to be a human resources organization, but it is also the employer of the longshore workers. Our role is to negotiate collective agreements, administer them, and hire, train and assign day labourers based on operational needs at the ports of Trois-

Rivières, Hamilton, Montreal and Toronto. I think it is appropriate that I was not there when the discussions were being held, because that is not my role. However, when we come to the end of negotiations, as we have here, I have been present since the mediators asked me to be. I am at the bargaining table every day.

Senator Dagenais: I'll make this my last question, so that my colleague, Senator Griffin, will have some time. Between you and me, this is not the first time that we see the employer use this strategy and drag out negotiations knowing that there will be special legislation to get the job done in its place. Sometimes that is the impression we get.

Mr. Tessier: Unfortunately, I can't manage other people's impressions and perceptions, but I can assure you, senator, with all due respect, that that was not the MEA's intent. That is not what we wanted to do. We attended all the meetings, the more than 120 sessions, over the course of 30 months. We made many offers. I can tell you that according to last summer's decision by the Canada Industrial Relations Board, a strike took place that was deemed unreasonable because we hadn't even received the wage demands yet. Unfortunately, we can agree to disagree about the MEA's intent, but I can guarantee you that that was not our intent.

Senator Dagenais: I will cede the rest of my time to Senator Griffin.

[*English*]

Senator Griffin: Thank you for being here with us today, Mr. Tessier.

My first question relates to your website, which states that the shipments of grain and liquid bulk handling and Oceanex shipping to the Atlantic provinces are unaffected by the strike. I was wondering if you would verbally confirm for me that that is indeed the case, and which category is not having a problem with shipments?

Mr. Tessier: The categories that you just described don't have a problem because they have essential services. That was determined in the past.

Senator Griffin: Okay. You're saying that's been recognized and there has been no problem.

Mr. Tessier: Yes, their union is recognizing it. As Mr. Murray said, they are very cooperative on this, making sure we have the manpower necessary in order to perform the work.

Senator Griffin: Thank you. In general, could you list for me what types of agricultural products are impacted by the strike?

Mr. Tessier: Unfortunately, my role is to manage the employees. I'm not commercially versed in all of that. I will not answer your question, because I don't know.

Senator Griffin: That's a good reason not to answer the question. I chair the Agriculture and Forestry Committee for the Senate. That's why I'm asking that question.

Mr. Tessier: Sorry, I should have asked to have a specialist with me on this. Unfortunately, you have me.

Senator Griffin: Okay. That's it. I have used very little of the time, so if Senator Dagenais happens to have another question up his sleeve, I'll refer it back to him. Thank you.

Mr. Tessier: You're welcome.

[*Translation*]

The Chair: Senator Dagenais, do you have another question? You have three and a half minutes left. We'll move on to the next 10-minute block, which will be shared by Senator Dalphond and Senator Mercer.

Senator Dalphond: Thank you for being here today, Mr. Tessier. We heard from the media that you're not seen much, so it's nice to see you, and it's nice for the media to see you as well. I understand that there have been two issues since April, namely the guaranteed income and the shift schedules. Would you agree that if the special legislation is passed, the old collective agreement from 2013, which expired in December 2018, would apply and would automatically restore the employees' right to a guaranteed income?

Mr. Tessier: Yes, that is stated in the provisions of the legislation. During the last strike, there was a transition period that allowed us not to reintroduce job security, because you have to understand that we don't have any more rail cars or freight. That means we would probably be paying people to sit at home doing nothing. Unfortunately, the law. . . Unfortunately, if the law is passed, it won't be bad for us, the union or the Canadian economy. There will be no transition period. If the workers have to go back to work tomorrow, then yes, we will reinstate the provisions on job security, meaning the guaranteed income.

Senator Dalphond: I understand that there will also be retroactive pay, since the collective agreement will be applied retroactively to January 1, 2019.

Mr. Tessier: No, unfortunately the pay will not be retroactive. Yes, the agreement will apply, but there was still a strike. During the strike, we are not prepared —

Senator Dalphond: No work was done.

Mr. Tessier: No work was done.

Senator Dalphond: But there was a period during which you changed the guaranteed income and the strike, because the strike was April 26.

Mr. Tessier: Yes, but there was a partial weekend strike, so we didn't have to pay for those hours because the employees did not have full availability for seven days. However, if the legislation passes, we will pay everyone tomorrow morning, even though there was no work.

Senator Dalphond: The second problem is the scheduling. You stated earlier in your presentation that this occurred because of the weekend strikes. This forced you to use the exceptional measures included in the collective agreement, because it is not

the usual schedule and does not reflect the way you manage. The legislation will ensure that weekend strikes are no longer possible. Does that mean you'll return to the usual schedule?

• (1450)

Mr. Tessier: If the legislation passes, given that there are no transitional measures, we could always use the shift schedule, but, in all honesty, that is not our intention. If the bill is passed tomorrow morning, we will do away with the shift schedule, go back to an overlapping schedule and work with the union. If there are other operational issues, then in two or three months, we could use the shift schedule, but if the bill passes tomorrow morning, then we will go back to overlapping schedules.

Senator Dalphond: According to Mr. Murray, two issues caused the strike: the changes to work schedules and guaranteed income. The coming into effect of this legislation will mean that, as of tomorrow, workers will go back to their regular schedule and guaranteed income.

Mr. Tessier: Yes, because the legislation will alleviate anxiety and mitigate the impacts of the strike, which led to volume losses from a business perspective. The legislation will allay market concerns. If there is special legislation, then it will mean that it will be impossible for either side to use pressure tactics. We will therefore be able to reinstate — we will obey the law with regard to job security. We will have no choice. Given that there will be no more uncertainty, we will go back to overlapping schedules and do away with shift schedules. In order to do that, we need the provision of the law to allay market concerns and uncertainty and get our volume back up.

Senator Dalphond: Thank you. That addresses two of the concerns raised earlier. If I understand correctly, you're preparing for a mediation process. You're an expert mediator. If, after 21 days, your mediator finds that no progress can be made and that neither side is willing to pursue the process, the mediator becomes the arbitrator. That is the person who will listen to both parties and make a decision about each contentious issue. How many contentious issues are there on the table? Are there 160, 25, 12?

Mr. Tessier: There are lots. I don't want to put a number out there because there's always some disagreement with the union when I put numbers out there, but I would say it's around 30, maybe 25 or 30 contentious issues at the moment.

Senator Dalphond: Are you prepared to let a third party make decisions about those 25 or 30 issues?

Mr. Tessier: Honestly, that's where we're at. I would have preferred to reach an agreement with the union, but we are so far apart in our positions that we need a third party to intervene. We're prepared to take that risk.

Senator Dalphond: There is talk of lost economic activity in Montreal, and that concerns me. Within your employers' association, since you also operate in Toronto and Trois-Rivières, for example, could some of this activity be diverted to other ports that are occupied by the same operators, whether in Halifax or elsewhere?

Mr. Tessier: It's not a question of the same operators, but rather the same shipping lines. It's a bit different. Your question gives me the opportunity to make the point. The shipping lines are not the decision makers at the Maritime Employers Association. I want to make sure everyone understands that, because we hear a lot of things.

Senator Dalphond: It's a bit of a mystery for most people.

Mr. Tessier: We are the Maritime Employers Association, and we employ the longshoremen and checkers in Montreal, Trois-Rivières, Bécancour, Hamilton and Toronto. We make the decisions. I am like a president of the employers' union. I have a board of directors, I have a mandate, and I make decisions based on that mandate, much like Mr. Murray does with his members.

Halifax and Philadelphia are ports that some of our shipping lines use. However, when you send the cargo elsewhere, it costs more in freight charges, which is great for CN and CP.

The Chair: Senator Dalphond, you have two and a half minutes remaining.

Senator Dalphond: I will yield the balance of my time to Senator Mercer.

[*English*]

The Chair: Senator Mercer, you have two and a half minutes.

Senator Mercer: Thank you, Mr. Tessier, for being here. I am going to change my question. You spoke about the decrease in volume in the Port of Montreal. Do we have a prediction as to the long-term viability of the Port of Montreal if we continue to lose volume?

Mr. Tessier: Any business that is losing volume is in danger. But as far as what the impact to the long-term viability of the Port of Montreal would be if we continue to lose volume, I don't have that information.

Senator Mercer: What about the economic impact on the Greater Montreal Area and the greater Quebec community if this decline in volume continues? Will there be jobs lost not just at the port but at the industries being fed by the port?

Mr. Tessier: There was an independent study that was brought to my attention last week stating that we're losing, as an economy, \$10 million to \$25 million a day with every day that goes by with the strike. I would say that's a greater impact than only to the Port of Montreal.

Senator Mercer: It seems to me that this problem keeps coming back. This is not a new problem that we're talking about here today. We can never permanently fix the relationship between unions and management in the long term, but do you see a long-term solution that would be acceptable to both the employers and the unions?

Mr. Tessier: We tried to find a solution with essential services, but we were denied that at the CIRB. I think what we need to do is create a relationship with the union and make sure we're not facing the same challenge the next time. We were

about to do it in Trois Rivières, Hamilton, Toronto and with the port checkers in Montreal. I do not see why we should not be able to do it with Local 375.

The Chair: Senator Mercer, your time has expired. We are moving to the next block of 10 minutes.

Senator Plett: Mr. Tessier, again, welcome here.

Senator Lankin has been — for her reasons and rightfully so — preoccupied with the constitutionality of the legislation more so than some of us are. I'm one of those who believe, over the years that I have been with the Senate, that probably 75% of all divisive pieces of legislation have been challenged by one person or another about the constitutionality, and usually they pass the muster. I suspect this one will as well.

Some will say this is a political question and maybe it is. In my opinion, we have a government that has been reactive and not proactive, not only in this legislation but on much of what they have done. Justin Trudeau represents a riding in Montreal. If my MP in my city didn't bother to intervene in a conflict that was as important to my city as the Port of Montreal is to the City of Montreal, I would be upset. In your opinion, why was the Prime Minister so passive in this conflict? Why is he uninterested in the future of the Port of Montreal, or is he?

Mr. Tessier: I cannot say if he is interested in the future of the Port of Montreal or not because I have never had the discussion with him. I will not comment on that.

I'm going to tell you something. Last summer, Minister Tassi had a discussion with both parties. What was said to me — because they were truly believing in free negotiation — was that I had to work harder and ensure that we are putting all our efforts into negotiating a deal. Based on that, what we have done as an association is we built a schedule starting in November. We even went to Sherbrooke because the spokesperson at the union lives in Sherbrooke and he had some family challenges. We totally understood that. It was not something against him. We wanted to go there. We brought the negotiating team over there and the mediators came with us. They tried everything. On this, I think Minister Tassi tried to support us and both parties as much as she could. Now, after 30 months and more than 120 days of negotiations, we're facing an impasse.

• (1500)

On what Mr. Trudeau thinks and whether it is a political question, you will see that I'm not a great politician. Probably I would not have a long career in politics, but I wanted to answer your question.

Senator Plett: You did a good job of giving me a political answer even though you may not be a politician, so thank you for that nevertheless.

I asked a question of the union, and I'm going to ask you the same question and, of course, I asked the previous one of them as well. The bill proposes that mediation will last 14 days, with the right of the parties, by agreement, to extend another 7 days, for a

total of 21 days, in which all outstanding issues — and you indicated to Senator Dalphond that's between 25 and 30 — could be decided through a mediation process.

How optimistic are you that an agreement can be reached in that period of time? What is your general perspective of the specific provisions in the bill related to the mediation and potential arbitration processes? I think you partly answered the second part of that question, but how optimistic are you that this can be achieved?

Mr. Tessier: As long as both parties come with realistic demands and are fair to each other — and I will agree with Mr. Murray that the ambience at the negotiation table is quite good, even though we are facing those challenges. However, at this point in time, both parties are in opposition. I think the 14 plus 7 days are needed because that might help us to achieve and negotiate. If both parties know that at the end of all this someone will decide for us, it's not better for me than for the union. I think it's a chance everybody takes, but after 30 months and the impact on the Port of Montreal — I will say the next sentence in French, if you don't mind, because I don't know the terminology in English.

[Translation]

The Port of Montreal is the economic hub of Eastern Canada.

[English]

That will put pressure on parties, and this is why I don't like it. As I said, it's not a victory to have special legislation for me as a negotiator, but after 30 months, 120 days, four mediators, including two super mediators, we need to come to the conclusion that we are at an impasse. I think the process that was proposed was one included in the first bill that was amended. I called it the "baseball" deal, and the best offer was removed. That would have been another good thing, but the amendment did not pass. At least if we have someone who can listen to us, we know that someone is a mediator and will say, "You know what? I think the union is right on that one." Do you really want to go to arbitration after? No, because you know what the decision will be.

I've been at Videotron in the past, and although I did not go through arbitration for CBA renewal, I was involved with grievances after the lockout at Videotron. They hired me after that lockout to settle labour relations, and we had that process and it was pretty simple. We knew where the mediator was going, and after that we knew if we wanted to have a decision or not. I can tell you that we settled 700 grievances in two and a half weeks.

Senator Plett: Thank you. Of course, you started off that answer by saying "if" both parties wanted to cooperate. If all parties had wanted to cooperate, we wouldn't be here today doing this, so people didn't want to cooperate.

Mr. Tessier: I agree.

Senator Plett: The minister has stated that permanent diversions to the U.S. ports are likely due to the strike, and these will have long-lasting, negative impacts on the integrated

transportation system around the Port of Montreal. You were hesitant to make observations about the general economics to Senator Mercer's question, but do you have any idea how many companies or businesses have indicated to you that they will no longer be using the Port of Montreal when this is done?

Mr. Tessier: To answer your question, no one is indicating to me directly because I'm not commercially involved with those customers. My customers are the terminal operators and the maritime lines. But I'm providing them with manpower, and I'm the employer of the longshoremen and the checkers. When we look at this, I'm not involved.

I've heard that some companies indicated that they are moving away and people are saying they might not come back. That's a chance that we're taking, but I cannot comment more than this, sir.

Senator Plett: Thank you. The minister also stated on April 10 that your association gave 72 hours' notice of its intention to modify the conditions of employment for members of CUPE 375. According to the notice, employees would no longer be guaranteed a minimum weekly income and would instead be remunerated only for hours worked. The union has spoken about increasing pressure tactics by you, the employer.

Why do you think this was the right time to take such action? Do you agree with the union's assessment — I'm sure you don't — that you have engaged in increasing pressure tactics?

Mr. Tessier: I don't agree with the union's assumption, that's for sure. The reason we used that — I think I explained it earlier — is it is important to see that we are the only port in North America that lost volume since January 2021. In the first quarter, we were the only port that lost volume. This is directly related to the uncertainty linked to labour relations.

Why am I saying that? Last summer we had a strike, and the Canada Industrial Relations Board described the strike as "unreasonable." Then all the importers and exporters, when they saw the end of the truce coming, they said they didn't want to go through what happened last summer again, so they started diverting their cargo to other ports. And this is exactly what happened.

For us, when we are losing volume like this, if we cannot have people working, we need to pay them to be at home. We decided to pay them for work done and work paid. We removed that disposition from the collective agreement because, at the federal level, we have the right to do that when a collective agreement has expired, and this is what we've done. This was not to provoke the union, but to protect us from the loss of volume that we were facing. We all knew we needed to make a deal as soon as we could because of the importance of removing the anxiety and uncertainty linked to labour relations is either to make a negotiated deal or to have another option, which is now special legislation.

Again I stress here, that's not the goal of the association. We've been working with the special mediators since February 6, and we would have much preferred to have a negotiated deal.

[Senator Plett]

Senator Plett: Madam Chair, the last time I was cut a minute short. Again, I show I have a full minute left. I put this one on a stopwatch, Madam Chair. If you cut me off, fair enough, I will relinquish my time. Clearly, Madam Chair, I was shortchanged a minute last time and you are doing the same thing this time.

Thank you, Mr. Tessier, for your comments.

The Chair: Senator Plett, you were not shortchanged the last time. We halted the clock to correct a technical issue. No one was shortchanged.

[Translation]

Senator Saint-Germain: Mr. Tessier, thank you for being here. You made reference to the fact that you didn't ask for special legislation, obviously. I gather you mean that it was the governments of Quebec and Ontario who asked for this legislation and you didn't want it. When I compare what the union representatives said to what you are saying — and this is often what we hear in the context of labour relations — each is responsible for the delays and each is just as responsible for not being open to the demands of the other.

In the current context, where parliamentarians aren't happy either about having to pass special legislation, including because of the economic impacts you raised, I'd like to know more about the considerations that inspired you during the negotiations with the union.

More specifically, I'd like to know this: The impact of the pandemic, therefore the economic interests, but also the human impact for businesses and individuals, even the economic considerations related to work stoppage, a strike and service interruptions, in other words pressure tactics — was all that taken into consideration?

• (1510)

I notice that at first you said that you were not that far from an agreement, but that was at odds with what you said later. You talked about over thirty provisions or items that kept you from coming to an agreement with the union. I would like to hear more from you on the situation, especially now, with the pandemic.

Mr. Tessier: First, to be clear, we were never close to an agreement. If that is what I said, it was not my intention. We were never close to an agreement. We did evaluate all the impacts and possible scenarios, and took them into consideration. Last summer, we withheld the payment of evening and night premiums, and we knew that that would cause a lot of issues. However, by cutting the pay for hours not worked and keeping wages at the levels they were at when people came to work, we did not see an impact, and the union did not decide to call an unlimited general strike then; rather, it called a weekend strike. We did not expect it to call a strike at that time.

We decided to use shift schedules instead of overlapping schedules. This is allowed under the collective agreement. Management reserves that right. Once again, we were not expecting the union to call an unlimited general strike. Why did we implement this schedule? We did so because in the week following the weekend strike we were no longer able to keep up

with our operational needs. We talk about having blanks. We were short on staff, and to address that we implemented shift work, as we have explained many times. The difference between overlapping schedules and shift schedules is that the workers work seven hours a day instead of five hours and 20 minutes. This allows for more people to come work, which enables us to keep up with our operational needs.

We never expected the union to call an unlimited general strike, because at that point there were regular schedules. I do want to be clear, though: I will not say the union is happy about that. However, in exceptional circumstances we had to take exceptional measures to continue supporting the health and safety of Canadians and the economy in general, and we had to ensure that we could get the SMEs, workers and companies that rely on the Port of Montreal everything they need.

Senator Saint-Germain: In your mind, you don't see any possibility of progress without the special legislation, and you see this situation as the outcome not of three strike days, but of 28 to 30 months of fruitless negotiation. Is that right?

Mr. Tessier: We have clearly reached an impasse. We cannot agree to the unions' demands. We have done everything we can to find a way, after 30 months, 120 days, and with the help of four mediators, two of whom are among Canada's finest, including Quebec's best mediator, Robert Bellerose, and Canada's best, Peter Simpson. Clearly, we are at an impasse.

Senator Saint-Germain: Thank you. I will give Senator Lankin the rest of my time.

[*English*]

Senator Lankin: Thank you very much. I'm actually going to cede my time to Senator Miville-Dechéne. Thank you very much.

[*Translation*]

Senator Miville-Dechéne: Thank you, Senator Lankin.

Mr. Tessier, I understand that you wanted to change the schedules because of a drop in revenue that is a point of contention. However, isn't the situation too tense to do that? Considering what led to the situation and the reactions on both sides, wouldn't it have been wiser to maintain the status quo so as not to give the union a reason to intensify its pressure tactics, which led, if I understand correctly, to a weekend strike and now to a general strike?

Mr. Tessier: Just to make sure we're all on the same page, I want to make it clear that we didn't change the schedules because of declining revenues. We took away compensation for hours not worked because of the drop in volume that caused a drop in revenue.

Again, thank you for the question. Here are the reasons we took action when we did: more than 30 months, 120 days and a strike that was deemed unreasonable last summer. In that context, we had lost the confidence of importers and exporters. It was therefore becoming urgent to act to ensure that we were protected. We are still nowhere near reaching an agreement today. We still have several demands. I said there were 25 to

30 items, but there are sub-items on top of that as well. When we made that decision, it was an informed decision to stop paying for hours not worked because the drop in volume was causing a drop in revenue.

As for the schedule, with the union launching a weekend strike, we were under pressure to move all the products Canadians need for their health and safety. We chose an option that is included in the collective agreement with the goal of ensuring that we are well placed to meet the needs of Canadians. I just wanted to give an overview of the situation.

Senator Miville-Dechéne: I understand. I'd like to ask you for another clarification. The union representative told us that in terms of wages, his union is following the lead of every other port. You told us that the conditions for the longshore workers in Montreal were better than those at other ports. Which is it?

Mr. Tessier: When it comes to better conditions than those at other ports, the union compared the pay increases to those in both Vancouver and Halifax, but at the table, it was those in Vancouver. We can't compare the standard of living in Vancouver to the standard of living in Montreal. However, there is a key difference. The Port of Montreal is the only port in North America that offers a guaranteed income. No other port offers job security, and no employee in any other port is paid to stay home when there is no work. That is the major difference.

Senator Miville-Dechéne: Thank you, that's fine.

[*English*]

The Chair: Honourable senators, the witness has now been with us for 65 minutes. In conformity with the order of the Senate, I am now obliged to interrupt proceedings.

Mr. Tessier, on behalf of all senators, thank you for joining us today to assist us with our work on the bill.

Hon. Senators: Hear, hear!

The Chair: I would now invite the next witnesses to join us.

(Pursuant to the Order of the Senate, the Honourable Filomena Tassi, the Honourable Omar Alghabra and their officials joined the sitting by video conference.)

The Chair: Honourable senators, we are now joined by the Honourable Filomena Tassi, P.C., M.P., Minister of Labour and the Honourable Omar Alghabra, P.C., M.P., Minister of Transport.

Ministers, welcome to the Senate. I would ask you to introduce your officials and to make your opening remarks of at most five minutes.

Hon. Filomena Tassi, P.C., M.P., Minister of Labour: Madam Chair, honourable senators, I'd like to acknowledge I'm joining you today from the traditional territory of the Haudenosaunee and Anishnaabeg peoples covered with the Dish With One Spoon wampum agreement.

• (1520)

I would also like to acknowledge those who are joining me today: my friend and colleague the Honourable Omar Alghabra, Minister of Transport; Sandra Hassan, Deputy Minister, Labour Program; Michael Keenan, Deputy Minister, Transport Canada; Andrew Brown, Assistant Deputy Minister, Policy, Dispute Resolution and International Affairs; Peter Simpson, Director General, Federal Mediation and Conciliation Service; and Christian Dea, Director General, Transportation and Economic Analysis and Chief Economist.

[Translation]

As senators know, there has been a work stoppage at the Port of Montreal since April 13. What began as a partial strike recently turned into an unlimited general strike, effectively shutting down the port.

[English]

Over the course of that time, it has caused significant harm to the Canadian economy, harm that is only expected to worsen significantly in light of the recent escalation.

First and foremost, I'd like to make it clear that our government believes that the best place to reach an agreement is at the bargaining table. That being said, the reality is that we must act now to bring a resolution to this ongoing dispute and prevent further harm.

The parties have demonstrated their inability to reach an agreement in the over two and a half years during which the government has been supporting them to date. The federal government's support has been vast and deep. We have provided federal mediators to support over 100 bargaining sessions. In February, I appointed two of the most senior mediators to assist in the process. They have worked tirelessly to help the parties reach a negotiated settlement. I want to thank them for their dedication and their remarkable hard work.

Direct and worsening impacts of this disruption are now being observed for essential goods such as food and medical products. For example, millions of dollars in fresh produce is spoiling without clear rerouting options, leading to higher costs and greater food insecurity. Farmers cannot obtain key fertilizers for spring planting, which could result in a weak harvest this fall.

Then there are the drug manufacturers in Montreal who rely on ingredients that arrive through the port in temperature-controlled containers. It is difficult to change these supply routes due to the specialized equipment requirements for temperature control.

This is because Canada requires a reliable trade infrastructure in order to stay competitive in the manufacturing jurisdiction.

Back-to-work legislation is not a decision that the government takes lightly. I come from a community, Hamilton, that is steeped in labour traditions. The values of organized labour are the values that I grew up with. I respect and admire the foundational contributions the labour movement has made toward making a better, safer, more prosperous and inclusive Canada. That's why back-to-work legislation is not a decision that we take lightly. It is our least favourite option, and we take it with a heavy heart.

If passed, Bill C-29 would end the ongoing work stoppage at the Port of Montreal and provide the parties with a neutral mediation-arbitration process to resolve the matters in dispute. It would also establish a new collective agreement, thereby providing much-needed stability at the port.

Bill C-29 is a last resort, and we had hoped it would not come to this, but unfortunately, it is absolutely necessary to end the work stoppage at the Port of Montreal before the situation becomes dire. We have provided ongoing, intensive support and encouragement to the MEA and CUPE Local 375 for over two and a half years. Yet, they remain unable to reach a new negotiated collective agreement.

If this work stoppage continues, the damage we are seeing in our national and regional economies, as well as our reputation as a reliable trading partner in the international community, will only continue to worsen.

Thank you, and now we will be happy to respond to questions.

The Chair: Thank you, Madam Minister. Honourable senators, for the time being, your questions will be directed to the Minister of Labour. When the Minister of Transport is with us online, I will advise you.

Senator Plett: Welcome, minister. Minister, I have three questions, and our chair does an absolutely fantastic job of making sure that we don't exceed our time, so I'm hoping you will help me in getting my three questions in.

Minister, in your remarks in the House, you said:

A lot has been said over the last couple of days about taking sides. I can assure colleagues that our government is not taking sides.

But it is Canadian workers and businesses who are being impacted by this shutdown, and one would have thought, minister, that you would absolutely take their side.

Your officials told senators earlier this week that at least 10% of traffic through the Port of Montreal has been lost, perhaps permanently. The U.S. East Coast ports on March 10 — you received a letter. Numerous businesses and industry associations wrote to you and Minister Alghabra noting how bad a labour disruption would be.

In light of this, minister, did you ever consider that your absolute priority should have been to prevent this strike from happening, a strike that is now causing such devastation to our entire economy? And did it occur to you that protecting the Canadian economy was your most important job and that you were not just a bystander in this?

Ms. Tassi: Thank you, Senator Plett, for that important question. I will reaffirm that it's not about taking sides. This is about providing the parties with an opportunity to continue negotiations. We know that the best agreements are made at the table, and so we have provided extensive support in that regard.

There were two mediators appointed. That started on October 11, 2018. Those mediators have been there every step of the way. It started with the conciliation officer and then transitioned to the mediators.

In addition, in February, I took the extra step of appointing two of our senior mediators — one joins us today, Peter Simpson — in order to assist the parties in reaching an agreement. One of the reasons we're here today is because of the economic impact this is having, and so that brings us to the reason why this legislation has been brought forward.

I'm trying to honour your right to ask two more questions, so I'll end there.

Senator Plett: Actually, minister, in your answer you already answered at least half of my second question.

Let me just ask you, in reference to the mediation that you said has been ongoing — I had two and a half years, and I think you maybe said three years — why did none of these efforts produce satisfactory results? When, minister, were you first made aware that these discussions were having serious difficulties?

Ms. Tassi: I would say in response that we've been monitoring this situation every step of the way. Since I've been appointed as Minister of Labour, I have been monitoring the case at the port.

The mediators are there to support negotiations and have been there. It is, in fact, two and a half years, and over 100 mediated sessions. I do have Peter Simpson here with me today who can talk about the details of that mediation process. He was one of the two senior-level mediators that were appointed, but we really wanted to give the parties the support they needed in order for them to reach an agreement at the table, and that's what we did.

Senator Plett: Let me ask my next question, and then if I have not gone over my 10 minutes, I would be happy for your official to talk a little bit about that mediation, if there is any time.

This strike is truly having terrible repercussions, and you are well aware of that. I believe they could have been avoided had the government intervened earlier.

As I have asked the two previous witnesses, the Prime Minister represents a riding in Montreal. In my opinion, he could have and should have been involved.

Minister, at what point did you first brief the Prime Minister on this file? On how many occasions over the past year have you briefed him directly? What did the Prime Minister say or do following these briefings?

Ms. Tassi: Thanks, senator, for that question. I want to say that with respect to the engagement that we have had, the mediators have been at the table the entire time, and I have been in communication with the mediators just to determine what was

happening at the table in terms of support through my department: Do you need more support? How are the negotiations going?

• (1530)

In addition to the mediators, we have also reached out to the parties. We had a number of conversations with the parties, driving home this message: We know the best deals are made at the table. We want to provide you with the support you need, but please come to an agreement.

That message was reaffirmed by me on the occasions when I spoke with both parties. It was also reaffirmed by other cabinet ministers who made those calls, including the Minister of Transport, who is joining us today.

It's important to recognize that we have been there every step of the way in terms of the mediators being present at the table but also communicating to the parties. In fact, when I appointed the two senior-level mediators, I wrote to both parties outlining that I was appointing the mediators, but reiterated the need for the parties to come to an agreement at the table and that we wanted to support them every step of the way in order to do that.

Senator Plett: Of course, that didn't really touch on my questions. Contrary to the other witnesses, who prefaced their answers by saying, "We are not political," you at least didn't do that, nonetheless giving me a bit of a political answer on the last one.

I appreciate the minister, and I'm sure the chair was trying to tell me my time was up.

The Chair: No, Senator Plett. I was trying to tell you that Minister Alghabra is now with us, if you have a question for him.

Senator Plett: I apologize to you, Madam Chair.

Let me ask the Minister of Labour if her official could give us a bit of a breakdown on the mediation process, if I have time. Thank you.

Ms. Tassi: Absolutely. I think that is a critical question, and I'm happy to pass it over to Peter Simpson, who will give that report.

Senator Plett: Thank you.

Peter Simpson, Director General, Federal Mediation and Conciliation Service, Employment and Social Development Canada: Thank you, senator, for the question, and thank you, minister. I'd like to say, in general terms, that we worked throughout multiple-day meetings. We would meet for a week, for four days, and we would work around the clock as much as people could stand. They were intensive talks. There were talks that were exploratory and there were talks that were without prejudice. We tried a number of different strategies in an attempt to effect resolution. Even earlier this week we met with the parties but we were unable to bridge the gap.

Senator Plett: Thank you very much.

Minister, I want to get back to this and I'll allow a general answer. Was the Prime Minister regularly briefed on the problems there? What, if any, action did the Prime Minister take?

Ms. Tassi: I know that the Prime Minister did have conversations with Premier Legault and other stakeholders. Of course, I can't reveal cabinet discussions, so I don't want to talk about that. I know the Prime Minister has been engaged with stakeholders, yes.

Senator Plett: Madam Chair, I will yield the balance of my time to Senator Lankin, who has been running out of time, if she needs it.

Senator Lankin: Thank you very much, Senator Plett. I appreciate that.

Minister Tassi, my focus has been on whether or not the bill you have presented meets the constitutional test, the Charter rights test. For me, a lot of the description of what has gone on in the past between the parties, back and forth, how long, is of no import. It is to the parties. It is to Montreal. It is not in terms of the Senate's decision making when I hold the belief that this bill may well be found to be unconstitutional.

I have read your statements in terms of the rationale for the bill. I have read the Charter Statement that the Government Representative filed in the Senate earlier today. I have read numerous court decisions. You'll be aware of *Saskatchewan Federation of Labour v. Saskatchewan*. We could talk about the CUPW and postal workers legislation under former Prime Minister Harper's government.

The tests have been reaffirmed over and over again. It is about whether or not this is significant undue interference. It is about health and safety and danger to the public. It is about public interest. It's not about the broader economy and economic impacts. That is part of what factors into how the parties resolve themselves, but it is not part of the constitutional test. I have to say that most of your answers in the media and/or the House of Commons referred to and relied on that, with a passing reference to the pandemic exacerbating conditions and the need for certain goods.

The CIRB decision last summer, during the pandemic, made it clear that the conditions do not exist and that the evidence is not supportive of essential services rulings in the Port of Montreal. They made it clear that there are alternate ports where these goods can be dropped off — yes, some American and some Canadian — the goods can still make it through, that the union has lived up to requirements around the movement of grains and cereals, and that they have offered to move all things to Newfoundland because of previous decisions.

I don't understand why, with all the court and tribunal precedents, that three days into a strike we now have justification for taking away Charter freedom of association rights of the unionized workers in this situation. Would you please speak to this core issue and why you are of the belief that this will survive a court challenge?

Ms. Tassi: Thanks very much for that important question. The factors we balanced in this are as follows: the history of collective bargaining in this round of negotiations, respect for the right to strike, the impact of the work stoppage, and the prospect of a negotiated settlement.

There are two parts to your question. The first has to do with the essential service piece and the CIRB ruling. I'm not going to speak to the CIRB ruling and what it would look like today. What I would say is that I believe — and I have said this in the House — the cumulative effect of the COVID-19 pandemic has exacerbated this situation. When we look at COVID-19, we are in exceptional circumstances, as we were in June 2020, when the CIRB put the ruling out. The accumulation of additional damage to the supply chains, together with the demand for supplies that deal with the health and safety of Canadians, has put us in a different situation. The impacts are graver. It's important that we hear from Transport with respect to what exactly that looks like. That is part of the consideration as we have moved forward.

With respect to the constitutional piece, I'm happy that you have the information. I won't go through that in terms of this being legislation that provides for the mediation process and that they have 48 hours to choose the arbitrator. What we have implemented in the bill is fair. The parties can still come to a mediated settlement prior to arbitration, and they have up to 21 days to do that. Giving them this opportunity is very important.

Directly to the constitutional piece, I would say a few things. First, the previous strike — the two work stoppages that accumulated 15 days of full strike — has given us insight into what this looks like. We come to this position today after five work disruptions, and then the latest one. The full work stoppage started on Monday, but April 13 is when it started. That impact, which Senator Plett referenced, represents \$600 million in damage to the economy. The estimated numbers we have now are \$40 million to \$100 million per week that can be lost. That's the first point.

The second point is in terms of the impact across the country to Canadians. I have a letter here from ministers from Ontario and Quebec. In addition to the 19,000 direct and indirect jobs that are taking place at the port, they provided numbers indicating that close to 250,000 employees in Montreal and 273,000 workers in Ontario could potentially be impacted by this. So it's not only looking at the workers. The 1,100 workers at the port are very important. We appreciate the right that they have to strike, but the accumulated effect — the five work actions that have been taken — provide us with information on how damaging this can be to Canadians.

• (1540)

With respect to the health and safety of Canadians, which I have raised, it's important to hear from the officials from Transport as to what is in those containers and why it's not practical for the union to be able to do what they have said that they would do — which I think shows great goodwill on the union's part — which is to take the containers, unload them and get them moving. There are complications there. Although that is

great will and great spirit, the practicality of making that happen is complex, complicated, impractical and not doable. That's for a number of reasons.

Senator Lankin: Minister, thank you. I'll try and save the time that Senator Plett gave for you to turn it to Transport, but my questions are for you.

I did have a good conversation with the head of the Port Authority and the head of the Maritime Employers Association, who describe the logistics, so I'm aware of some of that information.

You talk about how long the negotiations and mediation and everything has gone on. We have heard this from a number of people answering before us. I want to stress this point and then I have another question. All of that also includes almost two years of the tribunal decision-making process and adjudication of the issue of essential services, in which there were 25-plus witnesses and interveners, 100-plus pieces of evidence, very extensive, and looked at all of the health and safety, the essential arguments that you have made, and they rejected it within three days of the strike. Now you're saying from the 13th, fine. You have determined that you have the constitutional grounds to override the freedom of association. I'm not convinced that you do.

One alternative way of approaching this as well, with respect to the most pressing thing on people's mind when we hear you speak, is the necessary goods and support services related to pandemic support, pandemic health and safety for Canadians.

In Bill C-14 — which is in Finance Committee right now and we'll be dealing with in the Senate next week and most likely passing next week — there is a provision for the Minister of Health to use regulation-making authorities to ensure that there is no shortage of goods or materials that are required that could endanger the health and safety of Canadians, not just pandemic related but more broadly.

What consideration was given to using that provision as opposed to stepping in and ending Charter rights for these organized workers?

Ms. Tassi: Senator, what I would say in response to that is, first and foremost, the cumulative effect that the COVID-19 pandemic has had on Canadians puts us in a different position today. As this pandemic has evolved and things have changed, we see the impact that has had on supply chains and workers across this country, and the effect of that has put us in a very different situation today than we were in when the CIRB made their rulings. I would argue that today, the situation is different because of the impact of COVID-19 from when the CIRB made the ruling in June 2020 to where we are today in April of 2021. I think that has to be given serious consideration.

I will say to you that I have letters from stakeholders that are actually acknowledging the impact that this is having with respect to the areas that they represent. For example, in agriculture, the P.E.I. Federation of Agriculture is saying how important it is that the government do something because farmers are relying on the seed and the fertilizer, and they are ringing the alarm bells because if they can't get that crop planted, there is going to be a huge problem.

I have correspondence from medical suppliers that actually say —

The Chair: Madam Minister, the 11-minute block has now expired. We're now moving to the next 10-minute block, and it is Senator Griffin.

Senator Griffin: Thank you to both ministers for being with us. I have questions for each of you. I will start with Minister Tassi.

Thank you for mentioning the Prince Edward Island Federation of Agriculture. I'm very familiar with that as I'm a Prince Edward Island senator and chair of the Senate Agriculture and Forestry Committee. Those issues are of huge concern to me personally.

As minister responsible for labour, is the rationale for the back-to-work legislation specific to the Port of Montreal or is it a precedent to indicate that this government will intervene with back-to-work legislation if there are labour disruptions in the ports of Saint John, Belledune or Halifax?

Ms. Tassi: Thank you for that important question, Senator Griffin. This is absolutely not a precedent. This is a situation that is unique in terms of the COVID-19 pandemic; in terms of the history with respect to the process over two and a half years; with respect to both parties taking measures in hopes of putting pressure, which is their legal right, which we absolutely support, but to no avail. We are in the midst of a pandemic with an economy that is trying to recover, so each situation is looked at closely and carefully.

As I have said, this is a decision that is a difficult decision to make in terms of recognizing that it's the least favoured option, but a necessary option. But it is not precedent-setting with respect to future situations at the port.

Senator Griffin: Thank you. Under section 87.7(1) of the Canada Labour Code, services to grain vessels must continue despite a labour disruption. Do you view that the act should be amended to add any other critically essential goods, such as petroleum products, so that they would be protected from a labour disruption?

Ms. Tassi: Thank you for that question, senator. I would have to give that more thought. What I appreciate is the essential service provision that is in the code with respect to bringing those matters to the CIRB. The idea there, of course, is to ensure that any essential goods would be permitted to be excused from action and that there would be a commitment.

I would have to give that question a little more thought. If you had something that you would want me to consider, I would be pleased to accept that and read and review it carefully.

Senator Griffin: I'll make that note later. Thank you, minister.

My next question is for the Minister of Transport. Again, wearing my Maritime hat or Atlantic hat, I'm here to ask you that with the recent return of Canadian Pacific to Saint John and the established CN line to Halifax, the Maritimes finally has competitive rail service — to the benefit of shippers — to two ice-free ports.

Minister, is there an opportunity here to invest in the Maritimes to increase the economic security of Canada, and will the government invest in increasing the capacity of these two ports to accept more containers?

Hon. Omar Alghabra, P.C., M.P., Minister of Transport: Thank you, senator, for that question. Good afternoon senators. Thank you very much for inviting me to be with you here and for taking the time to consider this urgent emergency legislation.

• (1550)

To answer your question, Senator Griffin, our government, from day one, has focused on expanding our trade access, and supporting businesses and workers to export more, to find more markets and we're currently the only G7 country that has a free trade agreement with all other G7 nations.

Part of our agenda has been to facilitate the expansion of trade corridors, including ports on the east or west coast. Absolutely, several investments have been made, and yes, there are opportunities for additional investments to be made because both the Port of Halifax and Port of Montreal, and other ports on the east coast are extremely important for our economy, workers and businesses.

Senator Griffin: I think the advantage of that, as you would know, is that any possible future disruptions to the Port of Montreal would mean that any containers that are diverted could be diverted to Canadian ports, as opposed to the U.S. eastern seaboard.

Does the government have any environmental concerns that by expanding the capacities of the ports of Montreal and Quebec City, it would increase marine traffic on the very narrow shipping channel of the St. Lawrence River?

Mr. Alghabra: Thanks again, senator. Rest assured that no expansion project at any of the ports will take place or takes place without a thorough environmental assessment. That will include the impact on climate and marine areas to ensure that if there are any disruptions — and usually there are disruptions — they will not exceed the tolerable limit. So yes, every project that is proposed has to go through a thorough environmental impact assessment.

Senator Griffin: Okay. Thank you for your answers.

Senator Dalphond: I would like to thank both ministers for attending the Senate today. It's important that we have access to you both to get more information about this important bill.

Minister Tassi, there has been much speculation about what the adoption of the law means for actions recently taken by the employer and union at the port. Your department has provided a

brief statement, and the parliamentary secretary answered the question about this in the House yesterday. I am wondering if you could expand on this for us today.

[*Translation*]

Ms. Tassi: I thank the senator for his question.

[*English*]

I'm very happy to respond to this question. The bill states that the collective agreement between the parties that was in place in December 2018 comes back into force. That's essentially what happened. The important thing to realize is that the parties did negotiate that agreement. They were the ones that set the terms of the agreement, and now what will happen is that everything will revert back and that agreement will be in full force and effect. Anything that the parties could do in the collective agreement, they will be able to do. Anything that they cannot do as a result of the collective agreement will be repealed. They can't do that.

The example my parliamentary secretary gave was the question of the minimum weekly salary. The employer decided to change the pay and pay only for hours worked. Since this change wouldn't have been permitted under the collective agreement, the employer will need to revert back. To answer the question, it will all depend on what the terms of the collective agreement that the parties had previously negotiated and agreed to allow, and those are the provisions that will prevail.

Senator Dalphond: Thank you, minister. I don't know if you watched the appearance of Mr. Tessier, on behalf of the employers, earlier today.

Ms. Tassi: No, I didn't.

Senator Dalphond: You may recall — you better than me, as a matter of fact — there are really two conditions that triggered the strike: The stopping by the employer of paying the guaranteed income, seven hours a day; and the second thing was the decision of the employer to change the working schedule. In answer to my questions earlier today, Mr. Tessier said he agrees that if the bill comes into effect tomorrow, he will, as per the collective agreement, make sure that they are paid the guaranteed salaries all the time and he will revert to the old working hours schedule, which I understand were the two prerequisite conditions of the union to immediately end its strike.

As a consequence of your bill, we received today from the representative of the employer a confirmation that the two requirements that were asked for by the union to go back and to resume work will be met. I don't know if you were aware of that, but I think that the bill has brought something that, unfortunately, the negotiations at the table were not able to yield.

Ms. Tassi: Senator, thank you. I wasn't aware. I wasn't watching. I was preparing for my own appearance today. I would say that I think it's very good that you asked that question. I'm pleased with the response. I'm pleased to hear that.

The message that I continue to give the parties is that mediation is open to them. If they come to an agreement in the next 24 hours, then that agreement is going to stand. Even when

mediation starts, whatever agreement they come to, we're going to respect. I know that Peter Simpson is available as the mediator at any time. I know he carries his phone around on a regular basis. Whenever the parties reach out, he will be there at the table and the mediation service will assist in any way they can. It is important that I have the opportunity to reaffirm that message.

Senator Dalphond: The bill does not really refer to the fees and costs for the mediation and arbitration. In the back-to-work legislation for Canada Post, it said the Crown will get a kind of claim against the parties for that. Is that going to be provided to the parties here free of charge, or is that going to be charged later back to both parties?

Ms. Tassi: I'm going to ask my officials to step in. My understanding is that both parties will be responsible for payment, but I want Deputy Minister Sandra Hassan to confirm that I have that right.

Sandra Hassan, Deputy Minister, Labour Program, Employment and Social Development Canada: You're absolutely right, minister. The cost of the mediator arbitrator will be borne by the parties, 50-50. It is provided in the proposed bill at section 13.

[Translation]

Section 13 of the bill explicitly states that payment of the remuneration is the responsibility, in equal parts, of the employers' association and the union.

[English]

Senator Dalphond: When we move to section 15, there are orphan words that refer to the final offers, the kind of baseball arbitration. That was removed by the House of Commons, the main section was removed, but these words are still found in other sections. Do you see any problem with these words still being there? Mr. Murray has suggested that perhaps we should amend the bill to remove these words.

Ms. Tassi: Thank you, senator, for that important question. I will confirm that I have had a conversation with my deputy and have been very clear in terms of ensuring that the arbitrator mediator, who is either selected by both parties or appointed by me, has very clear instruction. I think the amendment made in the other place is very clear. The arbitrator/mediator will be given those instructions to ensure they have a full and complete understanding of the tools they have before them.

• (1600)

Deputy, I don't know if you wanted to add anything to that.

Ms. Hassan: No, you correctly expressed the position.

[Translation]

The adjustment made in the House of Commons concerned a specific clause to eliminate a form of arbitration. The fact that it is referenced in section 15 can definitely be taken into account directly when the mediator-arbitrator is appointed. They can be informed that Parliament discussed and indicated the form of

arbitration expected and that, consequently, the arbitrator is expected to use this form of arbitration, which is the only one referenced in the bill that, if passed, will become law.

Senator Dalphond: If I understand you correctly, the powers of the mediator are defined in another clause that clearly states that the only power is to mediate in the absence of an agreement to go into arbitration. Arbitration is carried out based on the issues at stake, and each party can present its position, after which the arbitrator can render a decision to favour either party's position, a position in between the two, or any other position he or she considers to be appropriate. This is clearly stated in the wording of the legislation, and the words that remain in clause 15 do not concern the power. They are just oversights. When we read the entire bill, there is no doubt as to the intent of Parliament.

Ms. Hassan: You have summed it up very well, senator.

Senator Dalphond: Thank you. I believe my time is up.

Senator Carignan: I will continue in the same vein, because it is an interesting question as it relates to the concept of latest final offer. That was taken out, and Mr. Murray said he was glad it was. I know that unions are usually not big fans of the concept of latest final offer. On the other hand, Mr. Murray also said very clearly that the union intends to challenge the bill's constitutionality as soon as it is passed.

Then, of course, we have to determine whether the bill is constitutional and whether it violates the right to collective bargaining. Section 1 of the Canadian Charter of Rights and Freedoms mentions the idea of limits and their justification in a free and democratic society, and the criteria include the concept of minimal impairment. Professors Drouin and Trudeau stated in the *McGill Law Journal* in 2015 that the final-offer arbitration model, which requires an arbitrator to select the latest offer made by either the union side or the management side, is less of an impairment to the collective bargaining process than regular dispute arbitration.

In other words, the latest final offer process is more likely to meet the Charter test than simple dispute arbitration. This worries me, given the union president's stated intent to challenge the bill's constitutionality.

Can you tell me whether, before the reference to this concept was removed in the House of Commons, there was any consideration of how it would affect the bill with respect to section 1 of the Charter? Could you also confirm that it was the unions that asked for this phrase to be removed? If they were the ones that asked for it to be removed, it would not be wise for them to invoke the concept of minimal impairment in challenging the constitutionality of the bill.

[English]

Ms. Tassi: Thank you for that, senator.

With respect to the way the bill was drafted, the final-offer provision did relate to an issue-by-issue basis. That means that the arbitrator/mediator would have the right to use both tools in order to determine the decisions that were made at the end of the

day. So it wasn't a final offer in terms of the whole negotiation being in one document, that the offer is submitted and that is the choice of the mediator/arbitrator. It was in the original legislation that it was an issue-by-issue basis.

Second, in this process, we absolutely have confidence and faith in the mediator/arbitrator. In fact, as you know, the legislation is such that both parties have the opportunity to submit names within 48 hours. It's my hope that both parties are going to come to a consensus as to who will be selected as mediator/arbitrator. That is an ideal situation, and I'm going to encourage the parties to do that.

We have faith that the person who is going to be selected, whether it's by the two parties or appointed by me because the two parties cannot agree on a name, will be a mediator/arbitrator who has the tools, skills and experience so they can conduct a mediation/arbitration process where they will use the tool when they need to.

In terms of the actual bill itself now, yes, it was amended by the other place. Between my comments and those of my deputy, we are giving the assurances that the mediator/arbitrator will be given very clear instructions with respect to the tools that are available to them and that the final offer is not a tool that is available.

With respect to the constitutionality of the final offer, I would have to study this in further detail in order to determine any constitutional argument. However, I would like clarification from you, senator, on the following: Are you saying that in terms of the way it is currently presented in the bill, or are you presenting that when it's a final offer, which is every item of the negotiation process that has taken place?

[Translation]

Senator Carignan: The authors are saying that, when used, the concept of final offer is less of an impairment to the right to collective bargaining than dispute arbitration.

According to the test of minimal impairment, we need to try to find the process that will impair the right the least. According to these authors, the final-offer model impairs the right to collective bargaining the least. This was stated by law professors in 2015. I don't think there have been any rulings on it yet, but I think it's worth looking at this impact to forestall future arguments in challenges to the constitutionality of the bill.

My second question has to do with section 87.7 of the Canada Labour Code, which includes grains as part of essential services. The Canada Labour Code mentions the transportation of grains, and this cannot be removed. We can see what is considered an essential service in situations that do not present an immediate and serious danger to the safety or health of the public. The concept of immediate and serious danger appears to be the criterion used.

I have to admit that I have been a senator for a fair number of years, and this is not the first back-to-work bill that I have had to vote on. In every case, I always hear the same argument. First, it always involves transportation, whether it is air, rail or postal, and this time, it is about transportation at a port. It always comes

down to the argument that these services are essential and crucial, and that we must therefore act and introduce special legislation.

Have you considered amending the Canada Labour Code to broaden the concept of essential services so that this concept is less restrictive and makes it possible for a port as important as the Port of Montreal, for example, to be designated as an essential service? Alternatively, have you considered establishing a list of things that would be considered essential services in the area of transportation?

• (1610)

In short, we are putting out a fire that was just created. It seems to me that amending the Canada Labour Code could resolve this type of difficulty. It would be similar to what was done in the 1980s when the Canadian Wheat Board Act was amended following a study carried out by Andrew Sims at the request of the Minister of Labour, if memory serves.

[English]

Ms. Tassi: Thank you, senator, for that very thoughtful question.

I would say, right now, the way this works, as you know, is that these decisions go to the Canada Industrial Relations Board, or the CIRB. I don't have the authority to make that decision. It goes to the CIRB, and they consider all the evidence and make a decision in this regard.

In terms of my time as Minister of Labour, this issue with respect to the essential service piece is not one for which I have received a lot of requests in terms of, "Let's take a look at this." That doesn't mean that I'm not willing. Listen, if there are ways to improve what we're doing, I'm always open to entertaining suggestions and comments in order for us to take a look and see if there are ways we can do things better.

There's a bit of a complication in the practical piece here. We just have to keep that in mind. I referenced it a bit earlier, but we have to recognize that these containers are coming in on these ships, and they're loaded with all kinds of containers. It becomes cumbersome when some have essential services and some don't. How do you prioritize? How do you ensure that the essential services can be docked and moved and the other —

The Chair: Minister, I am sorry. We have to move on to the next block of 10 minutes.

Senator Atallahjan: Minister, I have three questions; I'm hoping I'll have time to ask all three.

Minister, in your remarks in the House, you stated that, after the Canada Industrial Relations Board decision last year that work stoppages could proceed, the union commenced a partial strike on July 2, 2020. Four work stoppages followed throughout the summer of 2020, each one with an increasing duration and impact.

We know the impact that these work stoppages had on the Port of Montreal and on all businesses and workers who depend on traffic through that port. The losses were at least \$600 million. Some traffic through the port has now gone to the U.S. East Coast ports and, according to your officials, may never return.

Should your government not, at that point, have taken more decisive steps to ensure that what we are experiencing today would not happen again? Why did you not do that?

Ms. Tassi: Thank you, senator, for that question. It is absolutely a part of the consideration in deciding to move forward with this legislation. It's the economic harm, together with the potential harm to Canadians' health and safety. Those are considered.

It's really important to recognize — and I'm happy that Peter Simpson is here with us today — that the Federal Mediation and Conciliation Service has been involved since October 11, 2018. We began with a conciliation officer and then we had mediators at the table throughout that whole time, so the support has been there. Two mediators were appointed. In February, I appointed two additional senior-level mediators — Peter Simpson was one of them — because I really wanted to provide the parties with the support so the deal could be made at the table.

In addition to that, there have been phone calls and conversations with the parties, strongly encouraging them to reach a deal. I wrote a letter when I appointed the two senior mediators.

We must have respect for the collective bargaining process. We know the best deals are made at the table. Our focus as a government was providing the parties with the supports so they could come to that deal at the table.

I won't take any further time, senator, because I know you have two more questions.

Senator Ataullahjan: Thank you, minister, for giving me the opportunity to ask both questions. Minister, you have remarked that the Port of Montreal is the second-largest container port in Canada; that it handles 1.6 million 20-foot equivalent units and 35 million tonnes of cargo, representing approximately \$40 billion in goods; that the work stoppage is causing significant harm to Canada's economy, further disrupting supply chains that have already struggled through the COVID-19 crisis. You have said that every day the strike continues, the more likely it is that some of these businesses will simply not return.

Your Charter analysis repeats many of these assertions in justifying the current bill.

How were all those facts not already the case during the work stoppages a year ago? Why has it taken this long to act?

Ms. Tassi: Senator, again, I would repeat, we acted from the beginning. We have been on this file since 2018, and there has been a number of conversations, but also the support of the Federal Mediation and Conciliation Service, who are there 24-7. There have been over 100 mediated sessions, but we respect the

collective bargaining process. We wanted the parties to reach an agreement at the table. That is why we provided those supports along the way. Respect for that process ensures that that unfolds.

As you have said — and I'm happy you shared those numbers because they're very important — there have been five job actions that have taken place. If anything, they have demonstrated the importance and the necessity for us to move forward. The \$600 million is an example of that. That was clearly demonstrated to us.

The last point I would make on this is that a lot of people are saying that the strike happened Monday, and then the notice went on the Order Paper on Sunday. I would say this: this strike actually began on April 13. It wasn't a full strike, but it was a strike. The results of that strike were being felt at the port. It was the part-time, no overtime, no weekends and the training piece, which is less critical, but those are the two things. We're demonstrating the economic harm that this was causing, and that, combined with everything else, is the reason we've moved forward.

Senator Ataullahjan: Thank you, minister. During the briefing provided by your department to senators earlier this week, your officials noted that the difference between the parties amounted to more than just money. In fact, they said money was a less important issue than some of the other problems, including job security and work schedules. CUPE has said the same thing — that money is not the principal issue. The problems are multifaceted and, in fact, have proved to be intractable.

Given that, did you at any point consider enhanced interventions to resolve this dispute? Can you share with us what additional measures you considered but did not employ over the past year?

Ms. Tassi: The focus for us, completely, was giving the parties the support they needed to come to a negotiated agreement at the table. We have said over and over again that the best deals are made at the table, and we want the parties to come to that agreement. We have respect for the negotiation process. Both parties exercised their rights during that process, which put on extra pressure but still to no resolve.

Specifically, in answer to your question, the Federal Mediation and Conciliation Service was there throughout. There were conversations that were ongoing from ministers to the parties saying it is critical that you come to an agreement. We know of the economic harm. I know that Minister Alghabra would absolutely share the impact and economic harm, which is a topic you are raising. I want to highlight that it's one of the reasons for taking the action we have. We've done that because this matter needs to be resolved.

• (1620)

Senator Ataullahjan: Madam chair, I don't know if I have any time left. If I do, I would be happy to give it to Senator Lankin.

[Translation]

Senator Dupuis: My first question was about extending the collective agreement, and it has already been answered. My second question was about essential goods and has also been answered.

I do have another question. What is apparent from today's sitting is that the union representatives clearly said the strike had been called in response to what they perceived as provocation on the part of the employers. They also complained at least twice in their presentation this afternoon that the real decision makers were not at the bargaining table and that they were not speaking with the right people.

Furthermore, the representatives of the Maritime Employers Association told us that if the bill is passed, they will give the union what it is asking for. Therefore, given your department's considerable involvement in this file since 2018, what is its analysis of the governance structure of the Port of Montreal? Is there an element in these difficult negotiations that have been going on for years that concerns the specific governance structure of the Port of Montreal? I would also like to hear the Minister of Transport answer the question once the Minister of Labour has responded. Thank you.

[English]

Ms. Tassi: Senator Dupuis, I'm going to turn it over to my deputy minister to respond. Following that, I think it's also important that the Minister of Transport, as well as officials, speak a bit to the products and goods, because the question keeps coming up. I'm concerned because the information isn't being shared, and I think it's valuable information that each of you should have as you make your decision moving forward.

Sandra, if you could start with respect to the governance piece.

[Translation]

Ms. Hassan: Thank you for the question. I also listened to the presentations made by representatives of the union and the Maritime Employers Association. As you heard this afternoon, the union represents its unionized members, and the MEA is an association of employers, which is allowed under the code.

Because of the governance structure in place, there is not a single employer at the table, but rather an association of employers that gets directions from the different employers. Martin Tessier is their spokesperson, just as Michel Murray speaks for the union.

Our mediation team spoke with representatives of both the union and the MEA. There is a gap between the two parties' positions. Whether that gap is a result of each item discussed at the table or a governance structure that makes things complicated, I can't say. What I can say, however, is that we have worked incredibly hard with the representatives of both parties, the employees and the employers.

[English]

Mr. Alhabra: Maybe I can step in now. Thank you very much, senator, for your question.

Let me first talk about governance structure. By the way, the way the employer's association is set up in the Port of Montreal is similar to what we have on the B.C. coast, the BC Maritime Employers Association, where we have two ports: Prince Rupert and Vancouver.

Having said that, we are currently in the process of reviewing the port structure. There is a proposal that we're studying to modernize how ports are governed, and we're certainly always looking for ways to enhance the governance structure.

As far as the question of the impact and the products that will be affected, it's really important to go through some of the items, and I'm happy to defer to my officials to provide more detail.

Let me say this: The national transportation network is fundamental not only to our economy, but also to our security and the well-being of Canadians. Currently — and I know Minister Tassi has done a great job explaining this — the complicating factors are that COVID has taken out any slack that may have existed in the system. There has been a lot of stress added because of disruptions to our transportation and our economy — on the supply side and on the demand side. We are really seeing how stressed the network is and the impact that any additional disruption may have not only in the region, but on the broader network.

Some of the products that will be impacted — and have been impacted, frankly, over the last two and a half years because of the increased uncertainty over there and because of the disruptions that happened last year and the ongoing disruptions that started on April 13 — are medical equipment and pharmaceutical ingredients, including some ingredients that form a part of COVID-related medications and PPE. Some products that are exported are pork, agricultural products and forestry products. Other products that are imported include fertilizers for our farmers, automotive products and items for the construction industry. So this is already having an impact on fundamental aspects of our economy and the well-being of Canadians.

As Minister Tassi has illustrated, we have been very engaged and proactive on this. I was appointed as Minister of Transport this January. My predecessor, Minister Garneau, has been heavily engaged. Since January, I've made three, maybe four calls to the employer's association encouraging them to find a negotiated settlement because that will always be the most sustainable and reliable form of agreement.

I've personally been briefed by Minister Tassi or the mediator on a regular basis. We have been keeping a close eye on this. We have always wanted the parties to reach their own agreement. That is, of course, the ideal outcome.

During the summer strike last year — those 19 days or so of disruption — we saw what kind of impact it had then, and we could easily extrapolate what further impact it will have on our economy and well-being.

• (1630)

Minister Tassi made the difficult but necessary decision, which is what we believe Canadians expected of us, and we hope, first, that the parties can come together even before to reach an agreement, but that there is a path moving forward through mediation.

[*Translation*]

Senator Miville-Dechêne: I want to come back to the minister's answer to a question asked by Senator Carignan. Like Senator Carignan, I am interested in the issue of essential services. You were cut off before you could finish your answer.

Saying that some services, of a medical nature, for instance, should be declared essential is not necessarily tantamount to bringing in specific exceptions to the longshoremen's right to strike. Given how complex it is to sort out containers, as you noted, is the government looking at changing the Canada Labour Code so that the Port of Montreal as a whole is considered an essential service?

[*English*]

Ms. Tassi: Thank you very much, senator, for that question. To be clear, now under the code there is the opportunity for either party to bring this matter before the CIRB, the Canadian Industrial Relations Board. They make the decision as to whether something is an essential service or not and so that right is there. It exists. There is a process. They can make a decision. I'm trying to point out that I think the decision made in June of 2020 was made in June of 2020. Now, with the exasperating circumstances that have occurred as a result of COVID-19, I'm not sure what decision the CIRB would have made. But there is definitely more evidence to be considered with respect to that decision.

I would like Deputy Keenan to talk about some of the supplies that are in containers now that are not being delivered, because I think that is a very important point.

[*Translation*]

Senator Miville-Dechêne: Let me be more specific. In your opinion, would it be advisable to change the definition of an essential service? Whenever you are faced with this idea of imminent danger, is that something you consider? There is obviously plenty of evidence.

[*English*]

Ms. Tassi: That is a decision, of course, for the CIRB. That's an independent body. I don't have input into the terms of their decisions. The parties have the right to bring that case before the CIRB and I have confidence in the rulings that the CIRB makes, and the parties can bring forward all the evidence that they have before them to determine what services are essential and therefore have to be maintained.

[*Translation*]

Senator Miville-Dechêne: The minister wanted to ask her official to add something about the goods that are stuck at the port.

Michael Keenan, Deputy Minister, Transport Canada: Thank you. I will be glad to give some more information regarding the goods that are stuck at the port.

[*English*]

In the container system in Montreal, with large throughput and thousands of containers on the dock now, there are 12 ships that are backed up, 3 of them at anchor, a couple at berth and some in the river coming. On each of those ships there are thousands of containers.

There is a classification of critical containers that the Canada Border Services Agency identifies as ones that have, for example, material that is important for the health and safety and medical care of Canadians: pharmaceutical products, medications, medical supplies, PPE, medical equipment, disinfectants and soaps, et cetera.

There are about 130 of those critical containers that are either on the dock or stuck on these ships and the latest information we have is about 15 on the dock and over 100 on the ships. Even the ones on the dock, which in theory could be moved, are currently stuck and the ones on the ship are absolutely stuck. There is no way to get them off because of the blockage in the operation of the port.

Of those 130 containers with critical medical and health supplies, there are around 30 that have medical and health supplies that relate to the COVID response: medical devices that could be used in the treatment of patients with COVID, personal protection equipment and disinfectants.

We don't think there are any vaccines in there because the vaccines tend to arrive by air transport, but there is a range of other products that are important for Canada's response to COVID that are essentially trapped. In theory, it's possible to get a few of them off the dock, but it is absolutely impossible to get them off the ships that are stuck and can't even get to the port because of the labour stoppage.

[*Translation*]

Senator Miville-Dechêne: I have another question for the Minister of Labour. The union told us that what triggered this general strike, which, as you just said, is keeping important containers trapped in the port, was the employer's decision to unilaterally change certain working conditions, including imposing longer hours.

You mentioned several times that you are following the dispute very closely and that the government has been involved every step of the way. Did you know that this decision was coming? Obviously, I know that management does not have to consult you, but were you informed and did you make your position known in that regard, or were you afraid of stirring up a hornet's nest?

[*English*]

Ms. Tassi: Thanks, senator, for that question. When the parties are going to take action, they give me 72 hours' notice of the action they are going to take. It doesn't mean they are actually

going to take that action. It gives them the right to take the action if they so choose to take it, but they have to give me the 72 hours' notice before they can actually take that action.

It's really important to point out here that I don't enter into any part of the negotiations. That's between the parties. It's not my place to go to the table and start negotiating with the parties. I cannot do that.

My job is to put in the supports the federal government can put in through the mediation service, which, as I have said a number of times — and I'm not just saying it because Peter is here — has done an absolutely remarkable job. Phones are on 24-7 there, day in and day out. That's the role, and then to communicate to the parties — not getting into what issues are there but to say to the parties we want them to come to an agreement and to impress upon them the importance of coming to the agreement. I can't tell you how many times that I have said we know the collective bargaining process is so important and we want to uphold that, so we are asking you to please come to an agreement because we believe in the collective bargaining process. We know it's not easy. We know it's hard work. But two things are required: flexibility and a desire to reach an agreement.

I had assurances from both sides that they knew that and they were willing to continue to negotiate and dialogue, but it's not my place to enter on that table. However, in specifically answering your questions, we do get the 72 hours' notice with respect to actions that each side will have the right to take.

[*Translation*]

Senator Miville-Dechêne: In this particular case, because it is one case where things took a turn for the worse, you got the information from the management side. I appreciate that you can't step in, but mediation is still an option.

• (1640)

Did you take any measures to try to bring the parties together after the employer's announcement a few weeks ago that the working conditions would be unilaterally changed?

[*English*]

Ms. Tassi: It's really important to recognize that each side has rights. That's a part of the collective bargaining process. Each party can make a decision as to what rights they are going to choose to exercise, or not. So those rights are available —

The Chair: Minister, I'm sorry. I have to interrupt you. We are moving to the next block of 10 minutes.

Senator White: Thanks to both of the ministers for being here.

There have been discussions surrounding the number of vessels that have been rerouted and whether they are being rerouted to American ports or alternative Canadian ports. I am wondering if you can give us numbers on how many ships are rerouting to U.S. versus alternate Canadian ports.

Ms. Tassi: Thank you for that, senator. I'm going to turn that over to Transport because they have the exact details.

[*Ms. Tassi*]

Senator White: Thank you.

Mr. Alhabra: I'll ask my deputy to give specific numbers, but before I ask him to comment, I want to stress that we know that's happening. In fact, it started happening awhile back before the strike occurred.

Because of the current uncertainty and the labour disruption, we know that several shippers have been choosing other ports. Some of them have been going to Halifax, but Halifax is a smaller port. Many have been going to the U.S. The fear we have is that if this continues, we may never get this business back.

But to give you specifics, I'll ask Mr. Keenan to add some numbers.

Mr. Keenan: Thank you, minister.

Picking up on the situation the minister described, because the strike action and the uncertainty was building for a period, and there was the strike last August, there were a lot of diversions around that. By recent estimates, before the last round of labour actions by both sides, the renewed uncertainty resulted in about 10% of the volume of the Port of Montreal being diverted to other ports, principally Halifax, Newark and New York.

Those were pre-emptive diversions, but since matters have escalated, the shippers have been trying to find solutions. Quite frankly, they are kind of stuck. That is why, even as the strike goes on, there are ships that are on their way to Montreal; they have no place else to go.

This goes back to a point the minister mentioned at the beginning, which is the impact of the work stoppage. Montreal is the second-largest container port in Canada. In normal conditions, it moves \$275 million of goods through its docks every day. In normal conditions, you would see the ships going elsewhere. Now they are stuck because the global container freight supply chain and logistic system is absolutely maxed out because of the COVID disruptions.

There has already been some significant loss. We anticipate that the longer the strike happens, there will be more permanent diversions. Right now, we are seeing a lot of containers backing up in the system.

Last August, there was a big shift, and a lot of the ships actually diverted to Halifax and unloaded their containers. Then they discovered that because of the stresses in the supply chain and in the freight networks in Canada — which were consistent with those of other countries — they had a hard time getting the boxes back to where they were supposed to go. It wasn't until sometime in October or even November that some of the containers disrupted by the action in August actually got to where they were supposed to be.

There has been some significant diversion. We think some part of that — how much is difficult to say, exactly — is permanent. Right now, you're seeing a massive backup of containers.

Senator White: I think there would be an agreement that if we look at the number of times legislation has been passed to legislate people back to work, a lot of the time, they have

surrounded the movement of goods deemed to be essential. I think of Canada Post and Air Canada at one point, just since I've been here.

The reality, though, is that this is a stopgap because this could happen at any one of the other ports at any moment. We saw a similar response with trucking in British Columbia a number of years ago.

A 2015 decision of the Supreme Court in relation to a Saskatchewan decision that talked about the constitutional benediction to the right to strike. I refer to that because it focused on — and I would argue the court looked at — the need for an alternative mechanism to resolve a bargaining impasse. I would argue that the government today, as in the past, has probably not taken this on soon enough to ensure it doesn't continue to happen and has put in place an alternative mechanism other than legislating these workers back each and every time it happens.

What do you see as an alternative mechanism to resolve bargaining impasses going forward, rather than continuing to use the legislative process that we're using today? Thank you, minister.

Ms. Tassi: Senator, that is an excellent question.

We know the collective bargaining process is extremely important. It's critical for unions that they have the right to strike.

We are in a situation where, at the end of the day, you end up with one party or another unhappy with the way this gets resolved. There are opportunities for us to look ahead. The challenge will be to get both parties onside with whatever mechanism put in place, or with any improvements that can be made to the system so that both parties have their rights preserved and the opportunity to give whatever input or negotiate as strongly as they are able and to feel that the process is fair. If we can get to the point that would help prevent situations like this, I think that is something we could absolutely look at, but the key will be — and I think this is the part that is going to be a challenge — for both parties to be fully in agreement and supportive of the process and feel their rights aren't being compromised.

Senator White: Thank you very much, minister.

Somebody else might have already raised this, but in relation to the resumption of operations, unless there has been a change, I think the bill mandates that workers must resume operations one minute after midnight of the day following Royal Assent. I think the Canada Post back-to-work legislation provided noon of the next day.

I'm wondering whether consideration has been given to whether the port, both workers and management, could actually resume operations as quickly as has been demanded in this legislation.

Ms. Tassi: I'm going to ask my deputy to respond to that.

Senator White: Thank you.

Ms. Hassan: Thank you for your question.

You are correct that the proposed legislation indicates that there would be a resumption upon coming into force. Yes, we have indicated at the very end of the bill that the coming into force would be the first minute of the next day. As indicated by the representative for the MEA, actually what it would mean is that the minute the bill comes into force and the parties need to resume their operations, the MEA would be paying their employees under the provisions that used to apply; the clause that the union had been indicating had been taken away.

• (1650)

The employees would be asked to resume, as and when the work would be needed from them. So they would be paid and we would need to bring them in as the ships come in and the port is able to bring them into the workspace to unload the vessels.

Senator Patterson: I have a question for the Honourable Minister of Labour and then the Minister of Transport. Minister, I would like to follow up on the question Senator Plett asked earlier because I'm not sure that you were clear. The question is: How many times did you brief the Prime Minister on the situation at the Port of Montreal prior to the current strike?

Ms. Tassi: In answer to that, I would say that I can't reveal discussions at cabinet. I can't really speak directly in terms of that question, but I will say that my team worked very closely with the Prime Minister's Office so that the Prime Minister was always kept apprised of the situation at the port, in which he takes a very keen interest.

Senator Patterson: Thank you for that. I certainly wouldn't ask you to betray cabinet confidences and thanks for that answer.

Further to that, I would like to ask you, did the Prime Minister, as a result of briefings obtained through your office with his staff, did he do anything regarding this file other than fielding calls from concerned stakeholders?

Ms. Tassi: I think that question has to be put to the Prime Minister. What I would say is I know that he had a conversation with the premier, and I know that he had conversations with stakeholders. The extent of those conversations and the number, I can't respond to the specifics on those. But I know that those conversations took place, yes.

Senator Patterson: Thank you. To the Honourable Minister of Labour, in talking about our vital transportation network in Canada, ports are critical infrastructure and Canadians, of course, count on a steady and reliable maritime transport system. I will mention that is especially true in a region like mine, Nunavut, in the North, which is significantly dependent on annual resupply from southern ports and particularly Montreal and Quebec.

Minister, my question is this: In light of the protracted problem that we have all been forced to deal with today, don't you think the government should ensure that a situation like what we have in Montreal never happens again? Specifically, will you consider measures to make sure essential services like port services are maintained?

Ms. Tassi: As I said previously, there is a process with respect to the essential service piece. The Canada Industrial Relations Board is the board that hears that. Both parties at the table have the ability to go to that board and to make the case, and that board makes a decision based on evidence that's independent. That process is already in place to ensure the movement of essential goods continues.

Mr. Alghabra: Senator, if I may add to this, to your point about the importance of our port infrastructure, I want to echo that and say we totally agree, and it's really important to continue to expand and build on our existing infrastructure. That's why, in the budget that was announced 10 days ago, we have a \$2-billion fund for national trade corridor. That, by the way, includes a section for northern infrastructure, which will also help regions like yours.

Senator Patterson: That's music to my ears. Thank you, minister. I hope it materializes.

Further to the Honourable Minister of Transport, your deputy talked about the negative impacts on the integrated transportation system around the Port of Montreal and diversion to American or other ports. I know Mr. Keenan gave a response. I'm wondering if your department has done an analysis of these impacts that could be provided, tabled in the Senate?

Mr. Alghabra: Thank you very much, Senator Patterson. Transport Canada has done an economic impact assessment on the impact to our economy and our transportation sector, so I will certainly ask our officials if there is something that we can table with you.

Senator Patterson: Thank you very much.

[Translation]

Senator Bellemare: Many of my questions have already been asked. However, I'd like to come back to subclause 6(1) of the bill. The union representative who appeared before us indicated that, if the union members were given the assurance that their working conditions would go back to what they were on April 9, 2020, then they would end their strike.

They asked us to amend the bill and add items to subclause 6(1) in order to ensure that the working conditions that were in place on April 9, 2020, would be maintained in the event that they were forced back to work.

I know that it is always difficult to make an amendment and that it means additional costs and going back to the negotiating table. Could you ensure that the collective agreement that was in effect on January 1, 2019, is maintained until an agreement is reached? The spirit of the law involves ensuring that the working conditions that were in effect on April 9, 2020, will be maintained if this bill is passed.

This bill is a bit difficult to swallow. It is always preferable to negotiate an agreement. This bill may seem to somewhat favour the employer rather than the union. If the legislator provided for the maintenance of the working conditions in effect on April 9, 2020, that would no doubt facilitate the negotiations and the passage of the bill. I'd like to know what you think about that.

[English]

Ms. Tassi: Thank you, senator. I see my deputy's hand raised so I will defer to her first. If I want to add something after she responds, I will do that. Sandra, over to you.

[Translation]

Ms. Hassan: Thank you for your question, senator. If the bill comes into effect, clause 6 will ensure that the collective agreement applies once again. Consequently, the job security provision, which was one of the provisions the union spoke of, would apply under clause 6.

• (1700)

Furthermore, the second provision that's been changed is the one relating to shift work. This provision of the collective agreement allows making changes to shifts. The Maritime Employers Association indicated in their testimony this afternoon that they would agree to return to the conditions that were in place at the beginning of April. Therefore, given that the employers' representative has said that they were prepared to return to the previous shift work arrangement, there would be no more need to amend clause 6.

When the union asked you to amend it earlier, since they appeared before the employers' representatives, they didn't know that the employer would say, in answer to your question, that they would accept this request, which is an important one.

Senator Mégie: I'd like to yield the balance of my time to another senator, since my question has already been answered.

[English]

Senator Loffreda: I would like to thank you both for being here today, Minister Tassi and Minister Alghabra.

I just got back from the Finance Committee, so if the question has been asked or responded to, I do apologize, but I am from Montreal, and I did want to put this question about this important bill we are looking at.

I'd like to revisit some of the numbers you provided in the other place earlier this week or moments ago. You mentioned that the current work stoppage affects more than 19,000 direct and indirect jobs associated with transit through the Port of Montreal, and it would affect the jobs of up to 250,000 employees in Montreal and 273,000 workers in Ontario employed in the production of shipping container products.

Can you share with us how you came up with these numbers? Some have argued that the current strike is costing the economy between \$10 million and \$20 million a day. How accurate are these figures? Do these amounts line up with your department's projections of the impact of the strike on the economy?

Ms. Tassi: Thank you, Senator Loffreda. I'll start and then I'll allow Transport to step in.

In terms of the estimates I have said in the other place, you're absolutely right. It is 19,000 direct and indirect jobs at the port.

The other figures you mentioned — the 250,000 employees in Greater Montreal and the 273,000 workers in Ontario — are in a letter that was written to me by a number of ministers from both Quebec and Ontario, and they stated in that letter that these are the numbers of potential jobs that may be impacted, asking our government to take action so that these jobs not impacted. The numbers are between \$40 million and \$100 million in loss a week.

I will now turn it over to Transport to provide further details, if they have them.

Senator Loffreda: Thank you.

Mr. Alghabra: Thank you, Minister Tassi, and thank you, senator, for your question.

Let me give some examples to highlight how these jobs are impacted. For example, a forestry company that is selling forestry product to Europe and now is unable to ship its product; not only are they at risk of losing the sale permanently because those customers will end up finding other suppliers — and those suppliers, by the way, may not be in Canada — as they pile up inventory, they could end up laying off their workers because their inventory has piled up, and they no longer need workers to produce products because they have excess inventory.

Another example is an automotive parts maker that is waiting for products to come in. As you know, the auto sector works just in time, so if products are late, that could end up with layoffs of workers at the parts plant that is waiting for these products. Because these products are not arriving, they have to suspend manufacturing at their plant.

Those are examples of the impact. I can also say that we measured and gauged what happened last August with the strike at the port. We saw the impact it had on workers and the economy, and we can easily extrapolate what it would cause now. As a member of Parliament from Ontario, I heard from businesses in my region who were impacted when the Port of Montreal strike took place last summer.

Senator Loffreda: Thank you for the answers. The strike that took place last August had a devastating impact on many businesses. We know that wholesalers lost close to \$600 million in sales, and it took three months to clear the backlog of products at the port.

I have two questions. First, out of this \$600 million in lost sales, how much of this was absorbed by Canadian firms or companies?

Second, beyond anecdotal stories, is there any hard data or evidence that shows the impact the strike in August had on small- and medium-sized enterprises and the various supply chains? What was the ripple effect on the economy, and to what extent did this data influence the government's decision to legislate a return-to-work order?

Mr. Alghabra: Thank you, senator. The cost that the economy incurred last August was absorbed by the economy and was technically absorbed by the small- and medium-sized enterprises, or workers who had been impacted by this slowdown or interruption.

To answer your question specifically, yes, the data that we have is that 40% of small- and medium-sized businesses in Quebec were impacted by last summer's interruption. That's 40%. Four out of 10 businesses felt the impact at different levels depending on where they are in the supply chain, but 4 out of 10 businesses felt the impact of the strike.

Ms. Tassi: If I can add, and then we should hear from Deputy Minister Keenan. You have to also appreciate that for these small businesses, it's a huge hit. A container could be their whole investment. We also have to realize that. Small business has been hard hit.

Deputy Minister Keenan, do you have anything else that you would like to add?

Mr. Keenan: Thank you, minister. You and Minister Alghabra answered that. I will add one point, which is that because of the stress that the freight supply chains are under and due to their interconnected nature — and the senator has already observed this — we saw the strike in August had an effect that went well into autumn. There was a longer tail on the economic cost and dislocation from the work stoppage in August than you would normally expect, and it's a reflection of the fact that there is no slack in the freight supply chains right now.

• (1710)

We're seeing that now in terms of the impact that's come from the latest round of work interruptions. There has been some diversion. For example, a couple of container ships have gone to Halifax and Saint John and many shippers have tried to go through New York. But for the ones that are going through New York, even if they can get their containers to New York, they can't get them to Toronto because they can't get through Chicago. The intermodal hubs at Toronto and Chicago have been disrupted because of the effects of the Montreal strike. For example, the railways have basically stopped their intermodal trains between Toronto and Montreal and Chicago and Montreal. As a result, there are businesses in Canada who have products that are being adversely affected by the Port of Montreal job action, even though it's with respect to products that were never meant to touch the Port of Montreal.

This is a reflection of why there's an outsized economic impact right now, because of the stress the container supply chain is under due to COVID disruptions.

Senator Loffreda: Thank you. My next question is focused on the transportation of goods, and it may be a yes-or-no answer given the time constraint. Did the government prepare a contingency plan beyond this back-to-work legislation to help businesses move their products? In other words, assuming Bill C-29 was not before us and in the event of further disruptions, how would businesses have to adapt to make sure their products reached clients? Were trains or freight transportation ready to move products? Were other ports able to

compensate with short notice? What role could the federal government have played to facilitate the movement of goods and supplies?

Mr. Alhabra: Thank you, senator. The short answer is that, yes, we are examining options, but options are limited, to be honest with you, senator. We are limited by the existing infrastructure. That's why we're big proponents of investing further in our infrastructure to expand ports and rail capacity, but the options are limited. We're certainly doing everything we can — and we did that in the last strike — to facilitate other means.

Senator Loffreda: Thank you.

The Chair: Minister Tassi and Minister Alhabra, on behalf of all senators, thank you for joining us today to assist us with our work on the bill. We would also like to thank your officials for helping us. Thank you and keep safe.

Ms. Tassi: Thank you, Madam Chair. Thank you, senators.

Mr. Alhabra: Thank you very much.

The Chair: Honourable senators, the ministers have now been with us for 125 minutes. In conformity with the order of the Senate, I am now obliged to interrupt proceedings.

Ministers, on behalf of all senators, thank you for joining us today to assist us with our work on the bill. I would also like to thank your officials.

Hon. Senators: Hear, hear!

The Chair: Honourable senators, is it agreed that the Committee rise and that I report to the Senate that the witnesses have been heard?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

[*Translation*]

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Pierrette Ringuette: Honourable senators, the Committee of the Whole, authorized by the Senate to study the subject matter of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal, reports that it has heard from the said witnesses.

[Senator Loffreda]

[*English*]

DECLARATION OF PRIVATE INTEREST

The Hon. the Speaker: Honourable senators, I wish to draw to your attention that the Honourable Senator Campbell has made a written declaration of private interest regarding Bill C-218, and in accordance with rule 15-7(1), the declaration shall be recorded in the *Journals of the Senate*.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: second reading of Bill C-29, followed by all remaining items in the order that they appear on the Order Paper.

[*English*]

PORT OF MONTREAL OPERATIONS BILL, 2021

SECOND READING

Hon. Marc Gold (Government Representative in the Senate) moved second reading of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

He said: Honourable senators, I move that this bill be read a second time.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

THIRD READING—DEBATE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(b), I move that the bill be read the third time now.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Gold: Honourable senators, let me begin by thanking you for convening on such short notice and on a Friday to deal with a matter that is of significant urgency to the public interest. I know that nobody in this chamber really wants to be here today,

and believe me, it's with significant regret and disappointment that I rise to speak as the sponsor of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

From the outset, let me be clear, this legislation is an absolute last resort, which, as the minister has said and I will repeat, I can assure you this government does not take lightly. I know that the 255 members of Parliament who voted to approve this legislation in the wee hours of Thursday did not do so with any great sense of gratification. However, the dispute at the Port of Montreal is at an impasse and has escalated to the point that this legislation has become essential to safeguard the public interest.

As you know, the operations at the Port of Montreal were reduced on April 13 due to a partial work stoppage and the situation has since become a full work stoppage as of April 26, effectively paralyzing the port, as we have heard. The two parties in question, the Syndicat des débardeurs du port de Montréal — local 375 of the Canadian Union of Public Employees — and the Maritime Employers Association have been negotiating since September 2018, when their current round of collective bargaining began. Unfortunately, up to this point, they have not been able to reach an agreement, even after repeated attempts by the Government of Canada through its mediators to help both parties find common ground. With no agreement in sight, there is also no end to this work stoppage in sight.

[*Translation*]

I believe deeply in freedom of association and the collective bargaining process, but I'm also a senator representing the province of Quebec and a Montrealer. My remarks here today reflect both of these realities.

As such, unfortunately, I realize that there is no viable alternative to passing this bill. We have reached the point where it would be irresponsible for the federal government not to act.

[*English*]

Honourable senators, let me begin by briefly outlining the steps that the federal government has taken to date in order to support the parties in reaching a resolution.

• (1720)

The parties began bargaining in September 2018. The following month, the Federal Mediation and Conciliation Service became involved, first through conciliation and then in mediation beginning in December 2018.

On July 2, 2020, the union commenced a partial strike with the support of 99% of its membership. This happened less than a month after the Canadian Industrial Relations Board, or CIRB, released its decision regarding maintenance of activities.

While the question of what, if any, services would need to be maintained in the event of a work stoppage was before the board, neither party was able to engage in job action. Ultimately, the CIRB found that the parties did not need to maintain any activities in the event of a work stoppage beyond their statutory obligation under the Canada Labour Code to continue to service

grain vessels. However, they did acknowledge the union's commitment to continue servicing two vessels that supply Newfoundland and Labrador.

Upon the release of that decision, the parties were in a position to legally begin a strike or lockout, provided they gave the required 72 hours' notice. Four work stoppages followed that summer, each one increasing in duration and impact, ending in an unlimited strike that started on August 10, 2020.

Eleven days later, the parties came to an agreement on a seven-month truce period during which they would keep bargaining and stop all work stoppages. That truce ended, as we know, on March 21, 2021.

[*Translation*]

Esteemed colleagues, throughout the truce and ever since it ended, the parties have received significant ongoing support from federal mediators.

Even so, on April 13, the employer changed the working conditions, and the union began partial strike action. The Port of Montreal stated that the partial work stoppage reduced its capacity by 30%. That amount does not take into account the fact that shippers prudently reduced the amount of goods they sent to the port because they were concerned their goods could be affected by the dispute.

The situation has since escalated. The employer informed the union that it would apply collective agreement provisions to impose a specific work schedule requiring workers to work their entire shift. The union ceased all work at the port as of 7 a.m., April 26.

To put things in perspective, the Port of Montreal is Canada's second-largest container terminal. Every year, it handles 1.6 million 20-foot equivalent units and 35 million tonnes of cargo, representing about \$40 billion worth of goods.

[*English*]

The work stoppage we're seeing is causing harm now and has the potential to cause severe and lasting damage to the Canadian economy. Of note, many of you would have received a written declaration on behalf of the Chamber of Commerce of Metropolitan Montreal, CCMM, signed by hundreds of signatories representing a cross-section of entrepreneurs and small businesses that depend upon supply chains that link them to the Port of Montreal. The declaration of note states:

It is essential that the fluidity of the supply chain be maintained. The survival of many businesses depends upon it.

The situation is affecting more than 19,000 direct and indirect jobs associated with transit through the Port of Montreal, including in the rail and trucking industries. Stakeholders have also indicated that the stoppage is affecting the movement of critical goods, which could result in shortages or delays in care or treatment for Canadians — for example, ingredients for drug manufacturing — and certain products necessary for specialized medical treatment such as dialysis. Medtech Canada, a national

association representing the medical technology industry, has indicated that the work stoppage could jeopardize the supply of dialysis solution across Canada.

Although the union has given verbal assurances that it will continue to load and unload medically urgent supplies, the lack of fluidity at the port has meant that critical containers have gone unremoved. Deputy Minister of Transport Michael Keenan testified to the Committee of the Whole that there are 15 containers with critical cargo sitting idle. He had been advised that 5 of the 15 contain priority COVID-related equipment, while the rest contain pharmaceutical products and medical equipment.

Deputy Minister Keenan further testified that over 100 containers with critical cargo were aboard four ships anchored and waiting for the port to reopen. Given the logistical challenges involved in attempting to dock these vessels only to unload specific containers, these containers are simply not expected to be moved until operations resume in the Port of Montreal.

In addition, several agri-food stakeholders have indicated the work stoppage is damaging their ability to ship containerized agricultural products and causing harm to Canada's reputation as a reliable exporter of agricultural products. This also poses challenges when it comes to food security, as producers face challenges receiving key inputs such as fertilizer. Karen Proud, President and CEO of Fertilizer Canada, which represents a significant number of manufacturers and distributors in the fertilizer industry, stated:

As Canada continues to fight COVID-19, our citizens need a food supply that they can count on. Any strike will mean that essential fertilizer products cannot reach farmers in Eastern and Atlantic Canada. This strike threatens food security at a critical juncture.

To that end, some food producers also indicated that they have rerouted their exports to other Canadian and U.S. ports prior to the beginning of the work stoppage. Deputy Minister of Transport Keenan testified that approximately 10% of the volume at the Port of Montreal had been diverted pre-emptively to other ports before this work stoppage but, frankly, many shippers are stuck because of capacity limits at other ports.

Stakeholders from various industries, including agriculture and agri-food, forestry, retail trade, manufacturing, transportation, shipping and logistics, have all expressed serious concerns regarding the potential impact of the work stoppage. Some of these stakeholders include the Canadian Federation of Independent Business, Manufacturiers et Exportateurs du Québec, the Canadian Association of Importers & Exporters, the Canadian Produce Marketing Association, the PEI Federation of Agriculture, Soy Canada and the Ontario Bean Growers, to name a few.

Examples of these concerns relayed to the government include manufacturers, including drug and automobile producers, facing an interruption or shutdown of production due to limited supplies; food wholesalers facing spoilage and degradation of products; agricultural producers facing a shortage of fertilizers;

Canadian suppliers facing loss of business to "more reliable" U.S. suppliers; and the construction sector facing a shortage of material as activity gears up over the spring.

In fact, economic modelling has projected that the strike has generated up to \$40 million to \$100 million per week in damages to the Canadian economy.

[*Translation*]

The strike and the resulting backlog should lead to reduced hours or layoffs for workers and businesses that are unable to reroute crucial production inputs through other ports. For example, the owner of a sugar refinery said that he may have to suspend operations because he can't get any raw sugar through the port, and 215 jobs could be impacted.

Stakeholders in the agri-food industry also warned that short-term layoffs are to be expected as the transportation system experiences delays and the agricultural supply chain is broken.

We also know that the other ports on the East Coast of Canada have struggled with the higher volumes caused by shipments being redirected to them because of pressure tactics at the Port of Montreal in the summer of 2020, and that the ports on the East Coast of the United States are already extremely busy.

The reality is that international and regional supply chains already have very little flexibility. Finding efficient alternatives is almost impossible.

Honourable senators, the government believes that it is time to take decisive action.

That being said, let me make one thing perfectly clear. We heard today from representatives of the union and the employer, which gave us an opportunity to get a better grasp on the issues at the port. However, colleagues, while studying this bill, there is something that is important to keep in mind. To paraphrase Senator Lankin, for the government at least, it is not about picking a side. It is not about finding out who did what and when, who may be right and who may be wrong. It is not about passing judgment on the quality of the negotiations that have taken place up to now.

• (1730)

[*English*]

As Senator Harder reminded this chamber during our debates on Bill C-89, together with labour and management, the government constitutes the third party in the tripartite relationship of collective bargaining. The government's role in this framework is to safeguard the fairness of collective bargaining but also to balance the form of that process with other rights and interests vital to good governance.

With respect to the issues that have been raised concerning collective bargaining, Bill C-29 would provide that the collective agreement that applied from 2013 to 2018 would be extended until a new collective agreement comes into force. I would remind senators that this collective agreement is one that had been successfully negotiated between the same parties and had been welcomed very positively in 2013. The parties would be

required to abide by all terms of the extended collective agreement until the day that a new collective agreement comes into effect between the parties.

No unilateral modifications made by either side would stand upon passage of Bill C-29. Terms that were in the collective agreement that expired on December 31, 2018, would now be in effect.

Ultimately, colleagues, the government is proposing Bill C-29 as a responsible and balanced public policy response to an objectively harmful state of affairs at the Port of Montreal. With Bill C-29, we are talking about balancing the right of longshoremen to strike with a range of other vital interests, including those of the thousands that find themselves in the crossfire, like the businesses in the supply chain that will suffer significant direct or indirect costs associated with this dispute, many of whom have already been harmed by 13 months of a pandemic that has already cost countless Canadians their livelihoods. To be blunt, the government has to consider the jobs that won't be protected if the shutdown is allowed to continue, because those jobs will be lost.

Honourable senators, the necessity of Bill C-29 is acknowledged by all levels of government most directly affected by the dispute, including the Government of Quebec, the Government of Ontario and the City of Montreal, which happens to be led by one of the most progressive mayors in the city's history.

All of these levels of government are led by political parties of very different stripes and ideologies. However, they all share a common responsibility to govern, which at times requires making difficult and ideologically counterintuitive decisions for the broader interests of the region under their respective jurisdictions.

[Translation]

While back-to-work legislation should only be used as a last resort, for the parties to the dispute, Bill C-29 represents an impartial, neutral and effective dispute resolution mechanism that is consistent with the requirements of the most recent developments in Canadian labour law.

[English]

Honourable senators, this legislation was drafted to ensure compliance with the most up-to-date teachings of the courts in respect to the Canadian Charter of Rights and Freedoms. With your indulgence, I will elaborate further on this point and provide a more complete Charter analysis to complement the Charter Statement provided by the Minister of Justice.

As honourable senators know, and it is indicated in the Charter Statement, legislating the employees of the port back to work potentially engages the freedom of expression and the freedom of association, which are protected under sections 2(b) and 2(d) of the Charter respectively. But to engage the Charter is not necessarily to infringe the Charter.

As we know, the rights set out in the Charter are not absolute. Section 1 of the Charter provides that rights and freedoms may be subject to reasonable limits if those limits are prescribed by law and demonstrably justified in a free and democratic society. This means that Parliament may enact laws that limit Charter rights and freedoms, but where such limitations are demonstrably justified in a free and democratic society, the Charter is not infringed.

Honourable senators, it's the position of this government that Bill C-29 does not infringe the Canadian Charter of Rights and Freedoms.

Let us begin with the right to freedom of association protected by section 2(d) of the Charter. The freedom of association encompasses the right to a meaningful process of collective bargaining. This includes the right to strike when good faith negotiations break down. It follows that government action that substantially interferes with such a process will constitute a limit on the freedom of association and will require justification under section 1 of the Charter.

But the question of whether a legislative intervention like the bill we are considering today is a substantial interference with the collective bargaining process depends on the factual context of a particular case, and I will get to that in a moment.

But it is important, honourable senators, to recognize that the right to strike under the Charter is a relatively new legal development. Previously, in 1987, the Supreme Court of Canada decided that the right to strike was not protected. That changed in 2015, with the Supreme Court decision in *Saskatchewan Federation of Labour v. Saskatchewan*, to which reference has already been made, in which the Supreme Court of Canada reversed the previous jurisprudence and endorsed the right to strike as an aspect of a right to a meaningful process of collective bargaining under section 2(d).

The recent vintage of the constitutional right to strike is important for our purposes because it means that there is little jurisprudence defining the scope of the right. In fact, there are only two cases in which the constitutionality of back-to-work legislation has been considered since 2015. One is the 2016 decision of the Ontario Superior Court in *Canadian Union of Postal Workers v. Her Majesty in Right of Canada*. The other is the very recent decision of the Quebec Court of Appeal in *Procureur général du Québec c. Les avocats et notaires de l'État Québécois*, dated April 7, 2021.

The first of these cases, the postal workers, addressed back-to-work legislation enacted by Parliament in relation to Canada Post in 2011. The second case addressed back-to-work legislation enacted by the Quebec government in relation to its lawyers and notaries in 2015.

I will say a few words about both of these cases, but before I do, it is worth reminding colleagues that each of these decisions deals with laws that differ significantly from the bill before us today, and that arose in a factual context different from the one surrounding us today.

It is also important to note that *Saskatchewan Federation of Labour* dealt with essential services legislation, which entirely removed the right to strike for a wide cross-section of employees and which did not provide for a neutral dispute resolution process, such as arbitration, for those employees.

[Translation]

That context is different from the one we are dealing with today. The employees of the Port of Montreal have the right to strike, and they have exercised that right on four different occasions, including partial work stoppages and two general strikes.

Although Bill C-29 is a way to legislate an end to the strike, it also includes a neutral dispute resolution process, which I will talk about shortly.

[English]

In light of the limited jurisprudence in this area and the fact that *Saskatchewan Federation of Labour* involved a very different type of legislation, it should not be assumed that the bill we are considering today limits the freedom of association as understood by the courts under the Charter.

Bill C-29 is drafted differently than the back-to-work legislation that was considered by the Ontario and Quebec courts I mentioned a moment ago. Indeed, Bill C-29 is based on the principles elucidated by the Supreme Court of Canada in *Saskatchewan Federation of Labour* to ensure its conformity with the Charter.

Colleagues, although the government's position is that the bill does not substantially interfere with the collective bargaining process, it must be acknowledged that a court could come to the opposite conclusion — that the bill constitutes a limit on section 2(d) rights and must, as such, be justified under section 1.

But before turning to the considerations that support the constitutionality of Bill C-29 under section 1 of the Charter, the government also understands that the freedom of association is not the only Charter right that is potentially in play. As set out in the Charter Statement, Bill C-29 also potentially engages freedom of expression under section 2(b) of the Charter. It is possible in this respect that the act of collectively withdrawing labour is itself a protected form of expression.

Indeed, while some lower courts have come to this conclusion, others have expressed reservations about including the act of striking under freedom of expression. Indeed, the Supreme Court of Canada declined to rule on this issue in *Saskatchewan Federation of Labour*, so the question remains an open one.

• (1740)

Honourable senators, as I said, it is well-settled law that Parliament may enact laws that limit freedoms if those laws are justifiable in a free and democratic society. In the government's view, Bill C-29 would be found to respect the Charter.

The test under section 1 of the Charter asks first whether the impugned law serves a pressing and substantial objective. If it does, the analysis moves on to consider whether the law strikes a

reasonable balance between the legislative objective and the impact on affected rights by considering whether there is a rational connection between the law and the objective, whether the measure is minimally impairing and whether the limitation is proportionate to the positive effects associated with the legislative goal. I will address each of these elements briefly in turn.

The objective of Bill C-29 is to stem the disruptive impact of the strike and to prevent ongoing and significant economic harms to Canadian businesses, their employees and those who depend on their services.

In both of the cases considering back-to-work legislation since the *Saskatchewan Federation of Labour* decision, the courts had no difficulty accepting that the legislation served a pressing and substantial objective.

In light of the significant impact of the continuing work stoppage, which I discussed earlier and about which we heard a great deal in the Committee of the Whole, the government is confident this would be accepted as a pressing and substantial objective.

The first step of the section 1 proportionality test asks whether the limit on the right is rationally connected to the government's objective.

In the 2016 *Canada Post Corporation* decision, the Ontario court had no difficulty concluding that the legislation passed the rationale connection stage of the analysis. Legislating Canada Post employees back to work was clearly linked with the government's objective of avoiding economic harms associated with the strike.

Similarly, in the recent decision concerning Quebec government lawyers and notaries, the Quebec Court of Appeal readily concluded that the provincial back-to-work legislation was rationally connected to the objective of ensuring the continuity of services.

With regard to Bill C-29, the proposed prohibitions on strikes and lockouts, while continuing to promote a negotiated resolution of the dispute, is rationally connected to the objective of stemming the disruptive impact of the strike and preventing the ongoing and significant economic harms associated with it.

At the second stage of the proportionality analysis, the question is whether the law limits the right or freedom no more than reasonably necessary to achieve the objective. It is at this stage of the analysis that previous back-to-work legislation failed before Quebec and Ontario courts.

Each of those courts based their analyses on the following principle stated by the Supreme Court of Canada in the *Saskatchewan Federation of Labour* decision. Justice Abella, writing for the majority of the Supreme Court, said at paragraph [25]:

Where strike action is limited in a way that substantially interferes with a meaningful process of collective bargaining, it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour

[Senator Gold]

relations. Where essential services legislation provides such an alternative mechanism, it would more likely be justified under s. 1 of the *Charter*. In my view, the failure of any such mechanism in the *PSESA* is what ultimately renders its limitations constitutionally impermissible.

The legislation at issue in the recent Quebec Court of Appeal decision ordered the union members back to work and imposed a time-limited negotiation and mediation process. If the parties were unable to reach an agreement within approximately three months, the former collective agreement would be renewed for approximately five years, except for the salaries, bonuses and allowances which would be fixed by the legislation.

The Quebec legislation did not provide for an arbitration process. If negotiation and mediation were unsuccessful, the government employer would set the terms of employment through legislation. The Quebec Court of Appeal held that the legislation did not minimally impair the freedom of association because it failed to provide for a sufficiently neutral dispute resolution mechanism.

The Court of Appeal states at paragraph 112:

[*Translation*]

In exercising this power that, it should be noted, no other employer has, the government, and the legislature, must also and at all times respect the fundamental freedoms enshrined in the Constitution, including the freedom of association. Since *Saskatchewan Federation*, this freedom has become more prominent with the addition of a new attribute. This attribute is not the right to strike as such, since the act, no one would be surprised to hear, will continue to tightly control the right to strike according to the old, yet still dominant, logic of the *Wagner Act*. Rather, in the context of collective bargaining, this attribute is the right of union members exercising their freedom of association and who see their right to strike suppressed by a law, whether or not it is a special law, to simultaneously obtain from the legislator, in exchange for that suppression, some form of dispute resolution mechanism. The Supreme Court explicitly adds that this mechanism must be meaningful and effective.[82] I emphasize these words because, in my view, they alone are the cornerstones of the appeals in question. This is what the Constitution requires the legislator to do for union members in a case such as this one.

[*English*]

Building on the teachings of the Supreme Court in *Saskatchewan Federation of Labour*, the Quebec Court of Appeal noted that a genuine and effective dispute resolution mechanism necessarily entailed an element of independence and impartiality explicitly pointing to binding arbitration as one such process. Paragraph 116 of the judgment states:

[*Translation*]

... a genuine and effective dispute resolution mechanism necessarily entails an element of independence or impartiality that, in any event, cannot occur in a process where one party is in a position, in the final analysis, to

dictate conditions to the other party. Arbitration of a first collective agreement under section 93.1 and subsequent sections of the *Labour Code* is one example of such a mechanism and is a real improvement on the traditional *Wagner Act* model.

[*English*]

Honourable senators, the bill we are considering today is markedly different than the bill considered by either of the courts to which I referred. Simply put, Bill C-29 provides for a neutral dispute resolution mechanism that follows the Supreme Court of Canada's guidance in *Saskatchewan Federation of Labour*. Bill C-29 sets out a neutral process for selecting an arbitrator. Both parties contribute to the list of candidates. If there is a person in common, the minister must appoint that person. It also provides for the arbitration of all issues on which the parties have been unable to agree.

Finally, there is nothing in the bill that would tip the scales in terms of predisposing the arbitrator to favour one particular outcome or that would otherwise upset the balance of power between the parties.

In the *Canada Post* case, the Ontario Superior Court identified a number of concerns leading to its conclusion that the legislation in that case was not minimally impairing. As I mentioned earlier, the legislation at issue in that case was drafted prior to and without the benefit of the Supreme Court's guidance in *Saskatchewan Federation of Labour*.

First, in the Ontario case, the legislation fixed the wage increases and the duration of the agreement. The courts said taking these items off the table was fatal to the constitutionality of the bill. In contrast, no such measure is contemplated in Bill C-29. This first concern is therefore inapplicable to the bill before us today.

Second, the legislation authorized the minister to appoint an arbitrator without any input from the union. As I just mentioned, this is not the case with Bill C-29.

The third concern outlined in the Ontario Court's reason is that the legislation did not permit employees to continue to express themselves through site-specific strike activity.

• (1750)

Now, this concern, colleagues, is admittedly not addressed in Bill C-29. However, with the greatest of respect to the Ontario Superior Court, that doesn't mean that another court would necessarily take the same approach in a future case. The suggestion that arbitration and striking should be permitted or indeed required to take place at the same time, in fact, is contrary to the basic principle that these are two mutually exclusive ways of resolving a bargaining dispute.

In *Saskatchewan Federation of Labour*, the Supreme Court recognized as much, indicating that arbitration was an appropriate substitute for the right to strike on the part of essential workers.

It should also be noted that Bill C-29 privileges a voluntary resolution of the dispute by requiring the mediator or arbitrator to first endeavour to bring about a negotiated settlement. Moreover, as noted in the Charter statement, Bill C-29 was introduced only following unsuccessful efforts to bring the collective bargaining process, which had been ongoing since September 2018, to a satisfactory conclusion for all parties.

For all these reasons, Bill C-29 differs significantly from the legislation that was before the Ontario and Quebec courts in its impact on the collective bargaining process and the right to strike. It incorporates the teachings of the Supreme Court in the *Saskatchewan Federation of Labour* case to bring it into conformity with the Charter.

The final step in the Section 1 analysis asks whether the negative effects on Charter rights are outweighed by the beneficial impacts of the law.

What I will say is simply this: The government's position is that permitting the strike to continue would cause significant and long-lasting harm to Canadian businesses, individuals and the economy as a whole. The benefits of the legislation in preventing and mitigating these harms outweigh the impact on employees' rights. This is particularly so given that the employees have been collectively bargaining for over two and a half years to no avail and given that the employees will have access to a fair and neutral dispute-resolution process.

For all these reasons, the government is confident that Bill C-29 is compliant with the Charter of Rights and Freedoms.

As you have heard, colleagues — and I'll repeat — the federal government recognizes that negotiated agreements are always the best solution. Indeed, some would even criticize the government — and we heard it in this chamber today — for having held out hope this long for the parties to resolve their differences and to reach a new collective agreement.

[*Translation*]

However, as I clearly stated, we must find a way to move forward. Canadians and Canadian businesses are counting on us.

Ultimately, from a governance point of view, the Government of Canada believes that Bill C-29 was needed to protect the public interest.

The governments of Quebec and Ontario, the City of Montreal, the House of Commons and countless stakeholders have all been clear: it is simply not viable or acceptable for the Port of Montreal to remain closed indefinitely in the midst of a pandemic that has already caused significant harm to our economy and our people.

[*English*]

On this legislation, together with the Government of Canada, they are speaking with one voice. Bill C-29 has become the only responsible way forward.

[Senator Gold]

Honourable senators, I hope that you will join together with them in approving this step forward, one that is as regrettable as it is in fact necessary. Thank you very much.

[*Translation*]

Hon. Claude Carignan: Honourable senators, I rise today at third reading stage of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

The collective agreement for longshore workers at the Port of Montreal expired in December 2018. Nearly two and a half years later, we are at an impasse in the negotiations between the parties and facing an economic disaster caused by a general strike by the longshore workers of the Port of Montreal. After dragging its feet once again on this file, which is a key file if ever there is one, the government has been forced to intervene by passing special legislation to settle this dispute that has countless ramifications for the economy of Montreal, Quebec and Canada.

Let's not forget that in August 2020, a 19-day strike paralyzed operations at the Port of Montreal. That strike alone led to \$600 million in losses. I would think that should have set off alarm bells that the government should have heard, and it should have immediately shown stronger leadership.

Even before last summer's strike, the government should have taken responsibility to ensure that the parties could agree on a new collective agreement.

The Canada Labour Code is clear. Subsection 105(1) says:

The Minister, on request or on the Minister's own initiative, may, where the Minister deems it expedient, at any time appoint a mediator to confer with the parties to a dispute or difference and endeavour to assist them in settling the dispute or difference.

Section 107 then states:

The Minister, where the Minister deems it expedient, may do such things as to the Minister seem likely to maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences and to those ends the Minister may refer any question to the [Canada Industrial Relations Board] or direct the Board to do such things as the Minister deems necessary.

Given the extent of the government's powers, the fact that we are here tonight to debate special back-to-work legislation two and a half years after the Port of Montreal workers' collective agreement expired is beyond surprising; it is discouraging.

The government will say that its ability to act on this file was limited by the pandemic. Nothing could be further from the truth. Several mediators have been appointed by the government to support the parties throughout the negotiations, but after more than 90 meetings with support from government-appointed mediators, there is still no progress and we are considering special legislation. How could that happen? That is very troubling.

On the one hand, union members are exercising their right to strike because they want better work schedules so they can have better work-life balance. On April 23, an article by Stéphane Bordeleau was published on Radio-Canada's website. He wrote:

. . . union president Martin Lapierre explained that the work stoppage was necessary following the [Maritime Employers Association's] decision to unilaterally change work schedules Unions viewed the decision as an act of provocation

The right to disconnect and issues around disciplinary measures are other important points of contention for the union.

On the other hand, as we know, activities at all Canadian ports, especially at the Port of Montreal, which is the second-largest in the country, are strategic and vital. They are an essential link in a logistical chain that is crucial to our economy, especially when our economy is struggling, as it is now because of the COVID-19 crisis.

Here are a few figures regarding Montreal's port activities. Many of the following statistics are from the Canada Industrial Relations Board's June 8, 2020, decision, which is mentioned in the Charter statement on Bill C-29. With 20 kilometres of shoreline, the Port of Montreal supports over 19,000 direct and indirect jobs per year. A total of 40 million tonnes of merchandise transit through the port at an estimated value of \$100 billion a year. That is huge. That represents over \$2.5 billion per year in economic spinoffs because 90% of Quebec's and Ontario's exporters and importers use this entry and exit point to support their business activities. I would like to add the following, by quoting paragraph 21 of the June 8, 2020, decision:

In 2018, 1.7 million containers passed through the Port of Montréal. Some 2,000 vessels per year dock at the Port of Montréal, and up to 2,500 trucks drive to the Port every day.

The Port of Montreal is one of the five biggest ports on the east coast of North America and the biggest port in eastern Canada. With connections to over 140 countries, it represents a North American point of entry for goods from Europe and also more and more from Asia.

Medical equipment used in the context of the current health crisis is shipped in containers, but other essential goods are of course also shipped through the port. As stated in paragraph 22 of the Canada Industrial Relations Board decision of June 8, 2020:

The goods that pass through the Port of Montréal include perishable goods and dangerous goods, pharmaceutical products, fire protection and public safety equipment, medicinal plants, pesticides, chemicals

• (1800)

The Hon. the Speaker: Senator Carignan, I'm sorry, but have to interrupt you. We will come back to you for the balance of your time when the sitting resumes at 7 p.m.

[*English*]

Honourable senators, it is now six o'clock, and pursuant to rule 3-3(1) and the orders adopted on October 27, 2020, and December 17, 2020, I'm obliged to leave the chair until seven o'clock unless there is leave that the sitting continue. If you wish the sitting to be suspended now, please say, "suspend."

An Hon. Senator: Suspend.

The Hon. the Speaker: I hear a "suspend." The sitting is suspended for one hour.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

[*Translation*]

THIRD READING—DEBATE

On the Order:

Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

The Hon. the Speaker: Honourable senators, the sitting is resumed. Senator Carignan, you have 30 minutes left.

Hon. Claude Carignan: Before the break, I was reading a quote from the Canada Industrial Relations Board decision about the goods that pass through the Port of Montreal:

The goods that pass through the Port of Montréal include perishable goods and dangerous goods, pharmaceutical products, fire protection and public safety equipment, medicinal plants, pesticides, chemicals, foodstuffs, fertilizers, ores and explosives

However, building materials also pass through the Port of Montreal. As you know, a severe housing crisis is raging. Numerous housing construction projects are under way, with many more to come. We are already seeing a sharp rise in building material costs. If the materials become even harder to secure due to a work stoppage at the Port of Montreal, the costs will rise even more, and that will directly affect Canadians' ability to find housing.

I would like to quote paragraph 25 of the June 2020 decision of the Canada Industrial Relations Board and remind honourable senators that:

. . . the Port serves 110 million people and that many residents are supplied with goods essential for their health and safety.

I also want to mention that 6,300 businesses use the Port of Montreal's services and that the average value of the goods in a single container is about \$50,000, which is equivalent to the average yearly salary in Quebec.

We are also talking about \$250 million in tax revenue for governments, and the St. Lawrence-Great Lakes trade corridor is a vital multi-modal corridor for North American trade.

The Port of Montreal plays a crucial role in our economy. It is absolutely critical, and any holdup severely impacts not only Quebec and Ontario, but all of Canada and the northeastern United States. Multiple commodities, often essential ones, transit through the Port of Montreal.

The Port of Montreal is a major economic pillar for our country. The uncertainty caused by this labour dispute will have long-term consequences. The shifting of port operations to other East Coast ports in Canada or the U.S. is a prime example. Economic stakeholders associated with the Port of Montreal are worried about Montreal port operations eventually being diverted to more stable ports that are not plagued by long-running labour disputes. In fact, the Port of Montreal saw a 6% decline in freight traffic at terminal 1 in 2021. It also saw an 11% decline in container tonnage in March 2021, compared to an overall decline of 5.7% for 2020, in the midst of the pandemic. That decrease amounts to 300,000 tons of freight, or the equivalent of two Olympic Stadium towers. By way of comparison, the Port of New York and New Jersey saw a 12.6% increase in freight traffic in January and February 2021.

Some blame these variations, meaning decreases in Montreal and increases elsewhere, on the instability at the Port of Montreal caused by difficult and unsuccessful negotiations and sporadic strikes. Last summer's strike dealt a hard blow to Montreal port operations and North American trade. In fact, 80,000 containers were rerouted or stuck. Nearly 40% of Quebec SMEs were concerned about negative impacts, because wholesalers lost almost \$600 million worth of sales. It took three months to recover, and many businesses chose to reroute their goods through other ports, like the Port of Halifax. Rerouting increases the freight cost, which can be as much as 20 times the regular cost. Rerouting containers through the Port of Halifax carries an additional price tag for land transportation that ranges from \$300 to \$700 per unit. Some goods remained stuck at the Port of Halifax for two months because of the strike in Montreal.

Such disruptions can cause millions of dollars of losses for some businesses, such as the ones in export sectors like the aluminum, automotive and raw materials sectors.

It is therefore very urgent to find a solution to the labour dispute at the Port of Montreal for the good of everyone. That is why I encourage you, honourable senators, to support this bill, knowing it is absolutely within the government's jurisdiction to act on this matter.

This bill essentially does two things. It orders an immediate return to work, imposing significant financial penalties on parties who choose to defy the law. It also gives a mediator-arbitrator the power to use a formula to adopt a new collective agreement if the parties cannot agree. This formula is mediation-arbitration, and the final-offer arbitration process, to which I will return later, has been eliminated. Some people are questioning the constitutionality of such special legislation, which they say infringes on the fundamental rights of workers. What exactly is this all about?

Section 2(d) of the Charter protects freedom of association. The courts have clarified this right, as the Quebec Court of Appeal noted in a decision earlier this month, and I quote:

Freedom of association protects a right to collective bargaining that remains a limited right. It does not guarantee the achievement of any particular outcome as a result of bargaining.

The title of the ruling I just quoted is *Attorney General of Québec v. Les avocats et notaires de l'État québécois*. The decision states that in order for special legislation to violate section 2(d), it must be shown that the measures in that legislation disrupt the balance of power between the employees and the employer in such a way that the measures substantially interfere with a meaningful collective bargaining process.

In fact, in *Saskatchewan Federation of Labour v. Saskatchewan*, the Supreme Court of Canada stated the following in paragraph 25 of its 2015 decision:

Where strike action is limited in a way that substantially interferes with a meaningful process of collective bargaining, it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations. Where essential services legislation provides such an alternative mechanism, it would more likely be justified under s. 1 of the Charter.

The last passage I just read is important since the rest of my speech will be on section 1 of the Charter. I am sure that if Bill C-29 is challenged before the courts, it will be deemed constitutional, or at least deemed compatible with section 1 of the Charter. As a reminder, this section provides that a violation of a Charter right, like the one guaranteed in section 2(d), can be justified in a free and democratic society if that violation responds to a pressing and substantial objective and results in minimal impairment to the Charter right. The bill satisfies these criteria. The strike at the port will cause serious, immediate harm to key businesses and sectors, which also jeopardizes public health and safety. Under section 1 of the Charter, these elements represent pressing and substantial objectives to which the bill responds.

To convey the gravity of this harm, I will again provide examples of the potential consequences of a strike at the Port of Montreal, taken from the decision by the Canada Industrial Relations Board on June 8, 2020:

. . . in the event of a strike or lockout at the Port of Montréal, some medications going to Quebec, Ontario and the United States may be delivered late or expire before they are delivered.

. . . 48,882 tons of pharmaceutical products pass through the Port of Montréal in any given year.

. . . because of the supply chain that exists at the Port of Montréal, companies keep very little inventory in storage at their own premises. According to the witness, warehouses are now located on the St. Lawrence River, at sea, in trucks, on trains or on the wharves of the Port.

• (1910)

Given that several key sectors of the economy depend on “just in time” supply, considerable immediate harm could be caused if the strike were to continue for many more days, for example in the steel industry, which depends on the shipping of iron ore by boat.

If the courts were to find that the bill infringes on the constitutional right of association of the longshoremen, I have every confidence that they would also find that the bill constitutes a minimal infringement on that right. Allow me to explain.

The bill will ensure that the parties are consulted. It allows them to agree on the selection of a neutral and independent mediator-arbitrator. The mediator-arbitrator will have 14 days or, if the parties agree, 21 days to engage in mediation before proceeding to arbitration. After that period, the parties may also continue to negotiate a new collective agreement without having an arbitrated agreement imposed on them, providing their agreement is finalized before the mediator-arbitrator submits their report, which must be done within 90 days of the day on which they are appointed. These aspects of the bill offer an alternative to exercising the right to strike as a way to maintain the balance of power between employees and the employer so they can negotiate a new collective agreement. This defining characteristic of the bill enables it to pass the test of reasonableness and justification pursuant to section 1. In 2015, professors Drouin and Trudeau published an article in the *McGill Law Journal*, which reads as follows at page 438:

The presence of a mechanism for dispute resolution by a neutral, independent third party represents another important consideration in the minimum impairment test. In fact, the absence of such a mechanism could be fatal in the case of legislation prohibiting strikes. In that regard, many of the special back-to-work laws [in Canada] that were previously examined provide for the use of mediation or arbitration to resolve the dispute. A mediation-arbitration process . . . is certainly less prejudicial than simple arbitration that is not preceded by mediation or at least one last period of direct negotiations between the parties. That is also the case for legislation that leaves it up to the parties to choose the

arbitrator who will intervene to resolve the dispute, as opposed to legislation imposing such an arbitrator, particularly if the passage of the legislation is not preceded by consultations to that effect.

Bill C-29 not only provides for the use of mediation and arbitration, but it also enables the mediator-arbitrator to use another formula, that of final offer selection. Before the amendment made by the House of Commons, that was another positive aspect of the bill that supported the idea of meeting the minimal impairment test of the Charter section 1 analysis. I want to once again quote the article published by Professors Drouin and Trudeau in the *McGill Law Journal* in 2015:

. . . this formula requires the arbitrator to choose the final offer formulated by the union or the employer’s final offer to adjudicate the dispute and determine the applicable working conditions. . . . it is reasonable to consider final offer arbitration, preceded by a period of bargaining imposed on the parties in the presence of a mediator, as a formula that is less prejudicial to the collective bargaining process than the regular arbitration of a dispute.

I quote this passage as it reminds us that the union leader, Mr. Murray, in citing the amendment to the bill, was pleased with the removal of the last best offer process. It would be rather odd that the union, which expressed its intent to challenge the law, would claim today that the process of the last best offer does not meet the minimal impairment test.

The bill now proposes only one mediation and arbitration process led by a neutral and independent third party, which could even be chosen by the parties. As Senator Gold explained so well, this situation differs from the Quebec Court of Appeal ruling handed down this month. Indeed, this ruling held that the provincial law that ordered Quebec lawyers back to work in 2017 was unconstitutional, because the Quebec legislator failed to provide a genuine and effective dispute resolution mechanism in its legislation, which contravenes the findings of the Supreme Court of Canada in *Saskatchewan Federation of Labour v. Saskatchewan*, which I quoted previously.

I will conclude my speech by paraphrasing paragraph 103 of the Quebec Court of Appeal decision. In introducing Bill C-29, the government determined that negotiations on the collective agreement at the Port of Montreal had reached an impasse. It weighed the public interest against the serious, real and profound prejudices an extension — even a short one — of the dockworkers’ strike could have for Canada, including the risk of a shortage of essential goods in the middle of a pandemic. The legislator decided to intervene by introducing back-to-work legislation. This decision is the government’s prerogative, and the courts will have to give deference to this social and political choice. However, the legislator has chosen — and I believe it had to do so — to compensate for the suppression of the right to strike with a mechanism to resolve the dispute between the employer and employees that will allow the impasse at the Port of Montreal to be resolved fairly, efficiently and promptly, in the best interests of the country. That is why I support the bill, and I urge you, esteemed colleagues, to do the same so that it can be adopted by the end of the day. Thank you.

Hon. Julie Miville-Dechêne: I am rising to speak in support of Bill C-29 at third reading. This special law would force dockworkers at the Port of Montreal back to work.

As Deputy Chair of the Transport and Communications Committee, I have been made aware of the vital operations at the ports of Montreal and Prince Rupert, in B.C. I'm from Montreal, I was a journalist, and so I'm well aware of the toxic labour relations at the Port of Montreal, where there have been lockouts and difficult strikes. During one costly longshoremen's strike last summer, executives and security guards reported being assaulted and beaten by a group of about 50 unionized workers. The union replied that the incident occurred because scabs were present at the picket line, which was seen as a provocation. Union rhetoric is sometimes brutal. Many Montrealers were appalled to see the longshoremen's union advisor tell the mayor of Montreal, Valérie Plante, on Twitter to "shut her yap," because she was not adequately informed about the situation at the port. Mayor Plante was worried about how a general strike would impact the city. Yes, the negotiations are at an impasse. In early April, management stopped paying hours not worked during a tense period, which inflamed the situation. We are in the middle of a pandemic that is making life really hard for a lot of people. It may be helpful to reiterate, without going into too much detail, that the Montreal longshoremen's working conditions are enviable compared to their colleagues at other Canadian ports. One Montreal longshoreman who broke ranks with his union wrote the following: "The pay is amazing. When you want to become a longshoreman, you know what the work is like."

The right to strike, which is constitutionally protected, is essential to maintaining the balance of bargaining power between employers and employees. That said, court rulings that state that economic consequences aren't a valid reason to limit the right to strike were made before the pandemic.

Therefore, a constitutional analysis of Bill C-29 cannot ignore the context we're in. While the strike is legal, the right to strike is being exercised in the midst of an unprecedented humanitarian crisis. Other fundamental rights have been restricted in response to the pandemic, among others, the mobility rights being restricted by the curfews. In my view, the longshoremen general strike in the middle of the third wave of the pandemic is legal, but it is illegitimate, because it's the straw that breaks the camel's back for other workers, businesses and stores, who just went through a year in hell or who are about to go bankrupt.

- (1920)

Many businesses, hospitals and pharmaceutical companies need supplies passing through the Port of Montreal.

In 2019, two expert witnesses told the Canada Industrial Relations Board that supply chains are designed to be, and I quote:

... "just on time", meaning that products are delivered at the time when they are needed since retailers and manufacturers now tend to have fewer warehouses and depend on products arriving at specific times.

We also learn, from the evidence heard by the board, which Senator Carignan also quoted, that 425,000 tonnes of dangerous goods can pass through the port in one year and that, in the event of a work stoppage, those goods have to be kept somewhere, possibly in a warehouse.

In addition, the main supplier of medical equipment for health facilities, including the CHUM, receives a large amount of that equipment through the Port of Montreal.

However, that was before the beginning of the pandemic and, at the time, the CIRB found that those inconveniences would not cause an immediate and serious danger to the safety or health of the public within the meaning of the Canada Labour Code. That decision is the subject of an application for judicial review before the Federal Court of Appeal.

Longshoremen are not the only ones who have had problems negotiating their collective agreement during the pandemic. Other labour groups in Quebec are also dissatisfied with their working conditions. I am thinking of the exhausted nurses who are being forced to work overtime and who are constantly at risk of being infected. I am thinking of the teachers who have had to reinvent themselves, who are constantly worrying about keeping masks on little ones and who have to teach students in class and those isolating at home. Their unions have expressed their discontent loud and clear, but not by slowing their pace of work or refusing to work overtime. Instead, they are running shock advertising campaigns that air over and over again on television as an adapted union strategy. That strategy is victimless because we are in the midst of a pandemic and we cannot go without our essential services, given all of the disruptions there have been to society as a whole and to our supply chains. Let's not add to that. The public interest must prevail.

It is true that all Port of Montreal activities, as a whole, were not deemed an essential service by the CIRB prior to the pandemic. However, should the government legislate this by amending the Canada Labour Code? The federal government has already done so for products destined for Newfoundland transiting through the port of Montreal. I think this option needs to be considered. When asked about this issue earlier, the Minister of Labour, Filomena Tassi, did not comment on it.

In addition to resolving the current dispute, this solution would help prevent the cat-and-mouse game that has been going on for too many years between the longshoremen and their employers, who are several large shipowners, which complicates the bargaining process. Repeated threats to shut down the port put a heavy burden on the economies of Ontario and Quebec.

Experts estimate that each day of strike action costs the economy between \$10 million and \$25 million, not to mention all the problems of lost contracts, revised logistics, lost time and lost revenue, not only for the companies, but also for their employees, including everyone from machinists to salespeople to truck drivers.

I'd like to say a word about a Vietnamese restaurant owner I have known for 20 years who's at the end of his rope and who's barely getting by on takeout orders since last summer. The threat

of a strike at the port alone, the anxious markets, suddenly caused a spike in the cost of his single-use products. He applauds the special legislation.

In this dispute, the parties have been bargaining for far too long already without reaching any agreement. Despite the 100 or so mediation sessions, last summer's strikes and a seven-month truce, there is no agreement in sight.

Operations at the Port of Montreal have to return to normal and if the mediator-arbitrator ultimately writes the collective agreement, either party might have to deal with unpleasant surprises. This threat may be enough for the union and management to see eye to eye. So much the better if that is the case.

For all the reasons I just mentioned, I reiterate that I will be voting in favour of the special legislation. This last resort is necessary.

Thank you.

Hon. Jean-Guy Dagenais: Honourable senators, I rise today to share with you my indignation over Bill C-29. I will explain why I intend to vote against legislating the longshoremen back to work at the Port of Montreal.

First, the Trudeau government is asking us today to pass a bill that will obviously be struck down by the courts within three or four years, but that will, in the meantime, deprive longshoremen of the fundamental right to strike and allow maritime employers to change working conditions without having to negotiate.

The Trudeau government disregards a 2015 Supreme Court of Saskatchewan ruling stating that limiting the right to strike through special legislation is justifiable only for public health and safety reasons.

What's more, the same court also stated in its ruling that anticipated economic damage are no reason to deprive workers of the right to strike. It seems clear enough to me, and it also seems clear enough to many labour law and labour relations experts who expressed their opinions publicly in the last few days.

I'm not only the senator you know, but also a former union leader who is very sad to see the present government's irresponsible behaviour and its lack of respect for workers.

With Bill C-29, the Liberals are rehashing the same strategy they already employed with their first version of the legislation on medical assistance in dying. No matter how illegal their legislation, they force the members of this chamber, at least those who will do it today, to pass legislation that will eventually be declared illegal by a court of law.

How can we not feel indignant about the political audacity and the amount of Liberal contempt for court decisions in our country?

How can we not also feel indignant about the Liberal contempt for workers' rights, which were acquired over many years at the bargaining table?

Clearly, respecting court rulings and workers' rights is not in Mr. Trudeau's DNA.

Let's talk more specifically about the dispute at the Port of Montreal.

First, no one in this chamber should find it normal that dockworkers are without a contract since 2018, as is the case now.

In my view, this is what happens when employers strategically avoid negotiating, knowing that they can count on the complacency and the complicity of the government of the day to pass legislation that violates the rights of unionized workers.

Port of Montreal dockworkers didn't steal their current working conditions. They obtained them over the years through negotiation. The maritime employers agreed to those working conditions.

Now, if those same employers want to change those conditions, the principles of labour relations require that to be done through negotiation, not through special legislation enacted by the government, which will designate an arbitrator to set the dockworkers' future working conditions without any oversight.

The maritime employers' strategy seems clear to me. They refused to negotiate seriously. They tried to unilaterally modify provisions governing work schedules. That resulted in the work stoppage on Monday. Most of all, they publicly said malicious things about dockworkers' rates of pay for the purpose of stigmatizing them in the eyes of some members of the public and certain blinded politicians.

Pay is not the issue in this dispute. Work scheduling is. Dockworkers want better work schedules so they can achieve a better work-life balance and not have to be at work 19 days out of 21.

I believe we've heard Prime Minister Trudeau describe himself as a man who wants to put families first. Once again, we see how good he is at talking about something, then doing the opposite of what he promised.

Those who have gone to the trouble of examining the different stages of the current dispute can discern the maritime employers' strategy.

Historically, the five maritime employers are competitors who compete for the maritime transportation market in Montreal; they literally steal contracts from one another and work independently.

However, when the time came to negotiate, these same five employers decided to form a common front to deal with the dockworkers' union.

To achieve their ends, the maritime employers of the Port of Montreal chose Martin Tessier, who appeared before us today, as president of their association less than two years ago.

• (1930)

Where did Mr. Tessier come from? He came from Bombardier, where, as the vice-president of human resources for many years, he participated in what some might call restructuring. In reality, he participated in layoffs and, as such, was complicit with the company's executives who left with millions of dollars in their pockets to the detriment of small investors and taxpayers, who saw their government support the dubious operations of the company, which ran at a deficit. Martin Tessier is the one maritime employers chose to take on the longshoremen's union by introducing him to us in a July 2019 press release as a man whose management style is, and I quote, "focused on building trusted long-term relationships."

However, we learned today that this man, who has so many great characteristics, has not been at the negotiating table since his appointment.

I would like to add the following information to support what I was saying about the maritime employers' strategy. Just yesterday, the employer published a press release indicating that maritime employers would comply with the special legislation by reestablishing job security and respecting the provisions of the collective agreement.

To be clear, that press release was tantamount to the employers admitting that they were no longer respecting the collective agreement currently in place. In the world of labour relations, this is known as pure provocation on the employer's part, a strategy that consists of provoking a strike knowing that the Liberals in power will pass special legislation.

How can we give Mr. Tessier any credibility? A few hours ago, he testified before the Senate and told us that he was ready to do today what he refused to do a week ago, which would have prevented the strike and the special legislation in the first place.

Ask yourself if the maritime employers already had a promise from Justin Trudeau that Parliament would intervene if they allowed negotiations to drag on, thereby causing a walkout that would suit them. Ask yourself this simple question before you blindly support Bill C-29.

We have before us a useless, unconstitutional, anti-worker bill that violates a Supreme Court ruling, in *Saskatchewan*. More importantly, the bill before us does nothing to resolve this labour dispute, but rather supports a hypocritical employer that has no respect for the workers of the Port of Montreal.

Justin Trudeau and his government could have responded to that attitude any number of ways other than with Bill C-29, an unconstitutional law that bludgeons workers' rights. In a few years, some judge will recognize the illegality of this bill. I have no intention of being complicit by voting in favour of it today.

Maybe I should repeat myself. I have never blindly supported bills put forward by the Liberals and Justin Trudeau, and I never will. I will not close my eyes and hold my nose to vote in favour of this special legislation. Thank you.

[English]

Senator Plett: Your honour, we have no translation.

[Senator Dagenais]

The Hon. the Speaker: Honourable senators, we will suspend for five minutes while we figure out this technical issue. Is it agreed?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

[Translation]

Hon. Pierre J. Dalphond: Honourable senators, allow me to present a few observations as a jurist and senator from Quebec.

The first ones will be on the role of the Senate as compared to the House of Commons and the government, now that the Senate is an institution that isn't controlled by the political parties represented in the House of Commons. The second observations have to do with the fundamental rights at play here, and the third with the contents of Bill C-29 before us.

The general public may not fully realize it yet, but more than three quarters of the members of this chamber are affiliated to three groups that have no ties to the political parties or the government. What's more, none of these groups impose a position on its members when it comes to the votes that are held in the Senate.

In other words, a vast majority of the members of this chamber believe in individual independence and equality among senators. Former practices have become a thing of the past. The government of the day has to deal with this new reality as is the case today with the Committee of the Whole made up not only of ministers, but of representatives from both parties. By the way, the same cannot be said for the House of Commons, where the bill was passed under a gag order.

• (1940)

This newfound independence allows us to better fulfill our mandate and to make decisions based on facts while fully respecting the fundamental rights of all Canadians, including indigenous treaty rights, minority rights and rights recognized by the Charter of Rights and Freedoms, like the right to equality, freedom of association and freedom of expression.

I now turn to the fundamental rights that are before us today and that must be taken into account during our discussion and reflection on this bill.

In the 2015 decision in *Saskatchewan Federation of Labour v. Saskatchewan*, which Senator Gold mentioned earlier, the Supreme Court of Canada ruled on the extent of the right of association, most notably to include the right of freely associated workers to bargain collectively and, after negotiations have failed and a collective agreement has expired, to use legal pressure tactics to force an agreement, including, ultimately, by going on strike.

Justice Abella, a remarkable legal mind who will soon retire from the Supreme Court where she was appointed in 2004, wrote the following in the majority decision in 2015:

The conclusion that the right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations is supported by history, by jurisprudence, and by Canada's international obligations. . . . The right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right. It seems to me to be the time to give this conclusion constitutional benediction.

As the majority of the Supreme Court of Canada judges pointed out, the right to strike fosters fairness in the bargaining process. It pushes both sides to negotiate in good faith, which puts employees on an equal footing with their employer.

In this case, the last collective agreement freely negotiated by the Maritime Employers Association and the longshore workers' union, CUPE Local 375, went into effect on March 20, 2013. At the time, this agreement represented the shared intention of the parties. It was not imposed by a law or by arbitration. It did not happen by accident, but was the result of long negotiations by experienced people on both sides. In fact, since 1970, all collective agreements at the Port of Montreal have been freely negotiated.

As you know, collective agreements are by definition of limited duration. The agreement signed in March 2013 expired in December 2018. Unfortunately, more than two years later, the parties are still unable to agree on the terms of a new collective agreement. Based on what I understand from what we heard today in Committee of the Whole, the parties seem to be far apart on about 30 issues.

It was in this context that, in April, the employer decided to change the income guarantees and the work schedules. These actions came in response to job action taken by the employees, but they served to heighten the adversarial atmosphere. The workers responded with a general strike, a right that is enshrined in law. A mediator and many outside actors, who were calling for a return to the status quo that existed before the events that provoked the strike, were not able to resolve the situation.

In the meantime, this general strike — which, I repeat, is completely legal — has had significant consequences for the Montreal area, all of Quebec, and many businesses and individuals in eastern Ontario and some Maritime provinces. These consequences are apparently even affecting some medical supply businesses, while we are in the middle of a pandemic.

That is probably why the mayor of Montreal, the Government of Quebec and many economic stakeholders in Quebec are unanimous in calling on the federal government to intervene. They say that the stakes are not limited to the employer's economic interests, but also affect the development strategy of Montreal and of Quebec, as well as the supply of goods to third parties, particularly during the pandemic.

On the basis of mediation reports, the government came to the conclusion that an agreement to bring about the resumption of operations would be impossible to achieve. It is in this very particular context that it proposed that Parliament pass special legislation.

The government proposed special legislation as a representative of the community, not as an employer forcing the other party to accept its conditions, as was the case in the *Saskatchewan Federation of Labour v. Saskatchewan* decision, nor to impose its economic interests, as in the case of the Canada Post Corporation, of which the government is the principal shareholder.

In other words, the government's intervention in this case is driven only by its perception of what must be done for every dimension of the public interest. In this instance, the bill will have several effects, one of which is to force workers to go back to work, or, in other words, to end their right to strike.

In my view, such an intervention is always possible under exceptional circumstances, even if it puts an end to the exercise of the constitutionally recognized right to engage in lawful strike action in the exercise of the right of association, provided that it meets the strict criteria of section 1 of the Charter of Rights and Freedoms.

What is this case all about? First, we have the June 2020 decision from the Canada Industrial Relations Board, in which it refused to declare that maintaining all services required for the full operation of the port constituted an essential service. Based on evidence previously presented, the board found that the employer was demanding too much. It's important to remember that if too many things are designated as essential services, the right to strike becomes meaningless.

I also want to point out that the bill will restore the expired collective agreement and require binding arbitration if the parties cannot reach an agreement after a mediation period. This arbitration may cover all of the terms of the collective agreement that are at issue, of which there are around 30.

In other words, the bill mandates an end to the hostilities, forces negotiations to resume and, in the meantime, restores the collective agreement that was freely signed in March 2013, including the obligation that the employer pay for guaranteed hours. I would remind you that it was the decision to reverse these guaranteed hours after the collective agreement expired that provoked the strike.

As with any collective agreement, this one will also regulate the employer's management rights. Do all of these measures constitute justified and minimal impairment to the Port of Montreal workers' right to strike? I understand that the unions will put this question to the courts. I will refrain from answering it, but I do want to point out that this situation seem quite different from the case of the Canada Post Corporation, which has quite a history with special legislation.

Mr. Speaker, that is why I will not vote for or against this bill. I will abstain if a recorded division is held. In the event of a voice vote, this speech will confirm that I did not vote in favour of the bill.

Before I conclude, I want to point out that in response to my questions earlier today, Mr. Tessier, speaking on behalf of the Maritime Employers Association, said that effective tomorrow morning, if the bill is passed, they would cancel the two unilateral changes to the working conditions made on April 9 and 22 that provoked the general strike.

• (1950)

I want to remind honourable senators that the union has repeatedly been saying for the past week that its members would resume work as soon as these measures are revoked. It's really unfortunate that the mediation process didn't lead to that result, but I'm glad to see that, during the Senate proceedings, the employer finally committed clearly to what the union has been asking for.

Thank you. *Meegwetch.*

Hon. Tony Loffreda: Honourable senators, I'm rising today to express my support for Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal. As a Montreal senator, I believe it is my duty to say a few words on the matter.

As others have already explained, Bill C-29 aims to put an end to the work stoppage taking place at the Port of Montreal and to offer the Maritime Employers Association and the Longshore Workers' Union, CUPE 375, a neutral mediation and arbitration process to resolve their differences.

We know that both parties have been at the bargaining table since September 2018, but to no avail. They met more than 100 times, and a strike took place in August 2020. In spite of the good intentions on each side, the deadlock remains and has led to the present strike. Of course, I want to thank both parties for accepting to appear before us earlier this afternoon.

I want to emphasize that I believe in the collective bargaining process. I recognize that Canadians have a right to claim better working conditions and to exercise their right to strike. I'm not questioning that. On the contrary, I'm sorry to see that we've come to a point where the government needs to intervene with special legislation.

[*English*]

In reading the Charter Statement for Bill C-29, I note that the government recognizes that the bill potentially engages two sections of the Charter, including the clause that provides that everyone has freedom of thought, belief, opinion and expression. I know the government introduced this bill as a last-ditch effort to prevent further harm to our economy and get products moving again, while giving both parties an opportunity to pursue negotiations through a legislated mediation and arbitration process. I am hopeful the parties can resolve the issues in dispute with the help of the mediator/arbitrator and that a new collective agreement can be reached.

Admittedly, supporting this bill leaves me a little uneasy because it puts me in the difficult position of prioritizing the rights, freedoms and ability to earn a living of some Canadians over others. I am not taking this matter lightly.

[Senator Dalphond]

However, I also believe it would be a little short-sighted for me to only consider the claims of the workers and simplify this matter as one that deals exclusively with workers' rights and the ability to negotiate a collective agreement. In my assessment of the situation, I felt it was important to consider the bigger picture and the short- and medium-term impacts of the work stoppage.

As I struggled to take a position on this bill, the overall well-being of our economy — amid a pandemic no less — is the reason I chose to support Bill C-29. In my view, the government is trying to find a balance between the rights of the port dockworkers and the ability for Canadian businesses to export or import products and conduct their affairs.

It's clear to me that if this strike persists, there will be harmful impacts on our economy, businesses and the labour force. It has been said that the strike is costing the economy between \$10 million and \$20 million per day. Today is day five.

We also have data confirming the negative effects on the economy from last summer's work stoppage. For instance, 80,000 containers were turned away or immobilized. Wholesalers lost close to \$600 million in sales and it took three months to catch up on delays. We also know that some U.S. businesses have already shifted their business to American ports and some Canadian businesses are now moving their products through Hamilton and Halifax. While I appreciate some business has shifted to other Canadian ports, as a senator from Montreal, I am obviously concerned that this business will never return to Montreal and that there will be a permanent hit on my city's reputation.

According to Minister Tassi:

This work stoppage affects more than 19,000 direct and indirect jobs associated with transit through the Port of Montreal . . . would affect the jobs of up to 250,000 employees in Montreal and 273,000 workers in Ontario employed in the production of shipping container products.

I also appreciate that Minister Tassi and Minister Alghabra provided further details on the economic impact of the strike when they appeared before us in the Committee of the Whole today.

I want to remind senators that the Port of Montreal is the largest port in Eastern Canada with connections to more than 140 countries, and it's the second-largest container port in Canada. In 2019, it handled over 41 million tonnes of cargo. On average, over 2,000 vessels a year, up to 2,000 trucks per day, and 60 to 80 trains per week transit through the port. All this activity represents approximately \$40 billion in goods.

I appreciate we were in a pandemic last year, but it's also worth pointing out that the tonnage of cargo dropped by 13.25% last year compared to 2019. In other words, our economy cannot afford another indefinite work stoppage at the port. And our businesses, many of whom are barely surviving, should not have to deal with additional uncertainty and the risk of lost revenue and lost jobs. Not at this point in time.

[*Translation*]

A group of six major organizations, including the Chamber of Commerce of Metropolitan Montreal, the Conseil du patronat du Québec and the Manufacturiers et exportateurs du Québec, asked the government to intervene in this matter some time ago, and responded favourably to Bill C-29. The group, which also includes more than 400 signatories, believes that the port's operations are essential to keeping the economy running smoothly and that the Port of Montreal is a strategic infrastructure that our businesses must be able to rely on as they redouble their efforts to ensure their recovery.

• (2000)

The Government of Quebec also shares that view. Pierre Fitzgibbon, Quebec's Minister of Economy and Innovation, believes that the Port of Montreal is a public service that will play a strategic role in the economic recovery, while his colleague, the Minister of Transport, said that Quebec's economy cannot afford a protracted labour dispute. I agree that, in the current context of economic recovery while we are still in the middle of a pandemic, Canadian businesses cannot withstand another blow. The work stoppage would be catastrophic for them. Some people have asked the government to stand up for the Port of Montreal longshoremen and protect their rights by scrapping this bill. While I appreciate the intentions behind this position, I think we also have to worry about the state of our economy as a whole and the survival of our businesses, which need a reliable, efficient and competitive freight transportation system.

In supporting this bill, I am siding not with the wealthy, as some politicians have suggested, but with Quebec's workers and small- and medium-sized businesses. In fact, the Canadian Federation of Independent Business said that 53% of Quebec SMEs believe that a strike would hurt their business, and 72% of respondents wanted elected officials to step in.

Given the extraordinary circumstances and the expected negative impacts, I am willing to support this bill, and I urge the Senate to pass it without delay.

[*English*]

Hon. Terry M. Mercer: Honourable senators, today I would like to present some of my thoughts on this legislation. Bill C-29 provides for the resumption of operations at the Port of Montreal. Did we want to be here in this situation? No, but I think it is important to try to understand why we are here.

We heard the testimony from the witnesses on both sides of the issue. Of course, each side is going to have its own views on why we are here, but the question before us is: What can we do about it now?

I grew up around the Port of Halifax. I am the son of and come from a long line of proud union members. Unions have long fought hard to represent their workers and achieve pay equity, proper time off, dignity in retirement and many other protections, and I will continue to support the unions in this noble pursuit.

I also recognize that the employer has a duty to their employees to treat them fairly and to run a profitable business, but at what real cost? The two parties involved are at an impasse, and I appreciate the efforts of both sides to come to a settlement, but those efforts have not produced a satisfactory agreement, and here we are considering back-to-work legislation.

Honourable senators, we are talking about hundreds of millions of dollars in trade and thousands of jobs, but do not forget that because of this strike, the free flow of goods is threatened and the cost of goods could rise, and that will affect all Canadians at a time when they can least afford these sorts of disruptions; not to mention it is harming our image as a trading nation. A lot is on the line.

We have seen in the past labour strikes in a variety of sectors in our economy, and many times agreements were reached equitably. This is not the case here.

So what is the problem? Is it about salaries? Is it about schedules? Is it about working conditions? It depends on who you ask, but the blame game must stop, and the two sides need to come together. It is a shame a bill like this is even necessary, but hopefully an equitable agreement can be reached, and I encourage both parties to do whatever they can to reach a reasonable resolution, whether this legislation passes or not.

The Port of Montreal could suffer severe economic and supply losses, and that only hurts Canadians as we grapple with the third wave of this deadly pandemic.

In the past, port traffic has been diverted to the Port of Halifax. While we will indeed take the business, I will not stand for pitting one part of the country against another, even if the supply chain demands it. The Port of Halifax has enjoyed continued labour peace for years, and I applaud the unions and the employer for keeping and sustaining agreements and hope that all involved will continue to do so.

The Port of Vancouver, for example, has also suffered labour strife, and lots of it, over the years, similar to what's going on at the Port of Montreal now.

That raises the question, one I posed earlier: Why do we continue to have difficult, lengthy and sometimes acrimonious negotiations? Can we not learn from one another across the country about how to do this right and respect both sides?

While I do not want an interruption in supply chains, I have a hard time voting for legislation that seems to undercut the union's efforts. However, the damage to the Port of Montreal and the loss of value, as we heard testimony earlier, could be significant, and with the temporary diversion of shipping elsewhere, whether it be the Port of Halifax or other ports along the eastern seaboard, it's not all going to come back. That's going to cost jobs and hurt us all.

However, colleagues, I will vote for this bill in the hopes that both sides can come to an adequate agreement — albeit forced. Canadians are counting on it.

Thank you, honourable senators.

Hon. Frances Lankin: Honourable senators, I want to express my thanks to my colleagues who have gone before me. Very interesting positions have been put forward along with interesting observations and a good discussion. I do have concerns about the process, which I'll speak in just a moment, but I appreciate the contributions people have made.

I also want to thank Senator Gold. Your presentation was thorough, professional and wise, and, of course, I would expect nothing less from you and nothing less from a lawyer who's very accustomed to teaching, analyzing and determining constitutional matters. That's appreciated.

I also appreciate your response to me when I called earlier this week to ask that the Committee of the Whole include both the employer and the union and not only the ministers. I am very appreciative that request was agreed to by all of the leaders and that we were able to have this session today.

For those people who appeared in the Committee of the Whole, from the government, ministers' officials as well as the Maritime Employers Association and the union, I appreciate it.

I also had the opportunity to have a call directly with the national president of CUPE. I spoke directly, two days ago, with Mr. Tessier, who was with us today, from the MEA. In fact, he called me over the supper break to see if I had any more questions, so I very much appreciated that. The head of the Montreal Port Authority as well — they were all very helpful in helping me understand the issues from various perspectives here.

I do want to speak to content because that's most important, but in terms of process, I find it completely unsatisfactory, given that I understand this is emergency legislation, that we, in a very quick turnaround, with the legislation in front of us and with only a Committee of the Whole, had no opportunity to probe a number of these questions around the constitutionality and Charter compliance, which is one of the predominant roles assigned to us as senators. We have had a very good presentation of regional interests, and I appreciate all of the Quebec senators and Montreal senators who have spoken thus far who are helping us understand their view on the economic impact. I don't dispute economic impacts that result from strikes, particularly in the private sector. I think it's important for us to realize that in the regime of collective bargaining, when things come to a standstill or get to an impasse, there are rights afforded to both the employer and to the union with respect to notice of lockout and lockout, and notice of strike and strike, and that on either side those cause economic impacts, and that each situation is to its own particular facts and has to be looked at in that light. However, the bottom line is that that is the bargaining leverage afforded through a legal collective bargaining regime.

• (2010)

I respect all the comments that have been made, but I was talking about what I can accept or agree with or not. I can't agree that we can make a decision in supporting back-to-work legislation at which the heart of the question for us is to determine if there are reasonable justification and reasonable grounds under section 1 of the Charter to override the rights that

are provided in section 2 of the Charter. I can't accept that we can say that this is a legal strike, but it's an illegitimate strike. I appreciate that's opinion, and respect that that is opinion.

To me, legal framework when followed and pursued — and where there are not games of purposeful delay on either side or purposeful strategic positioning on either side — using in a dilatory fashion the rules that are set out, means these parties should be able to come together. They haven't. What's the next step?

The next step for me is not saying, within three days of a full labour stoppage occurring, that there is no hope here and that we're going to step on these section 2 rights.

I want to ask just a couple of questions; if all of us feel a sense of confidence in the information we have thus far. I have heard we may not get the volume back to Montreal. We may be affected \$10 million to \$20 million. We may cause urgent medical supplies not to be delivered: COVID and non-COVID. There have been a number of statements, all of them couched in the "may, may not, may, may not." We're at a time when we're under tremendous stress in our economy. We're still seeing economic growth happening but not fast enough and we need a recovery. I'm with everybody on that. But why in this instant are these workers to bear the brunt — in fact subsidize — the nature of the employer's business in this case.

I think that we have not been presented with enough information to wrestle the constitutional issue as far as we could as a chamber. Obviously every court will decide it based on the facts in front of it. We don't know what a future decision will be. We do know what the precedents are. The precedents clearly support that there must be very solid, justifiable reasons for infringing these rights. The Charter Statement we got was very vague about broad economic impacts. That's not a test. What is the impairment that is being put here, and what is the imbalance that is being put here? Trying to minimize that imbalance is absolutely important.

The parties have agreed to live up to provisions within the code, obviously with grains. The provision of services to Newfoundland is not, in fact, in the code as was stated earlier, but it is something that the union and the employer have agreed to, and also to move necessary COVID drugs and other drugs.

Why then are we being told by officials that there are a number of containers sitting on the docks right now that contain COVID pandemic supplies? I asked Mr. Tessier that in the phone call that we just had. He didn't know the answer to that. He has told me that during the last strike, when the officials from the department told us that no containers were moved, when they asked the union to move under the agreement and under the provisions that the union had given of what they were voluntarily willing to do, they did in fact move those. They didn't ask often. He told me that is because of the logistical issues that they see.

We have not been able to probe those things on either side, and again I think the process has not served us well to be able to deal with the issue that we have finally.

I am just not sure if perhaps the speaker might be able to tell me how much time I have left. I would like to discuss the provision.

The Hon. the Speaker pro tempore: You have seven minutes.

Senator Lankin: Thank you very much. I appreciate that. I intend to move an amendment, so let me wrap up talking about the bill itself, saying I do not ascribe motives to the government, all of being anti-union here. I think that there is a great deal of pressure all governments and all Canadians are under in the circumstances that we face. They look for a balance. Do I think they got it right? No, I don't. I think that the constitutional rights have not been afforded full consideration here, and the rationale that we've been given has not met the tests of either the Saskatchewan Federation of Labour decision, the Supreme Court decision or the CUPW and Canada Post under former Prime Minister Harper; legislation that was brought forward to end the strike.

I do want to make an amendment, though, that will address one of the issues the union raised, which is the return of the provisions of the collective agreement in the working conditions as of April 9. You'll know that the bill provides for the collective agreement to be reimposed as of January 1, 2019. That's good, but those provisions allow for the unilateral changes in work hours, for example, that were done, and a different mechanism outside of the collective agreement provided the opportunity to the employer to make the changes with respect to job security.

The union has expressed — and I think under the conditions rightly so — a fear that now, after having asked for a week that if those two provisions were removed they would go back to work, they are being told that if they're forced back to work and the legislation passes, then we will remove them. Both of those could be reinstated at any point in time in the future. Why this amendment is important is that it adds the date of April 9 to the provision of a reinstatement of the collective agreement. The reason that is important is it would then continue the conditions that were in place at that time throughout the process of mediation arbitration. It is an attempt at a further balancing of the interests of the parties here.

Those conditions being frozen as of a date before the MEA introduced unilateral provisions — with notice, but introduced those unilaterally — would keep those provisions from being reintroduced over the course of the remaining mediation arbitration time. For the union, that date is important. We are taking away leverage from them in terms of the economic impact of the strike, and we are not ensuring that the provisions of the collective agreement and the unilateral changes which provoked the full-out strike, starting as of Monday of this week, are eliminated in giving some balance back.

I believe that this legislation has not been reviewed with sufficient time. I understand the reasons for that. But I believe that the responsibility is to come to a determination to the best of our ability collectively on the constitutional issue at stake here — and the Charter rights issue at stake here is paramount — and that we can't just run roughshod over that. While I appreciate the three-plus hours this afternoon of Committee of the Whole, that does not substitute for being able to bring forward the kind of

examination of previous court decisions and of the Industrial Relations Board — which by the way has an expertise particular to the Canada Labour Code and to these provisions — which has ruled that there is no legitimate reason to limit the right to strike with further essential services being declared, and which has taken into account the Supreme Court and other decisions as they are compelled to do when they are making these decisions, and which they have the competence to do as an expert administrative tribunal.

• (2020)

MOTION IN AMENDMENT NEGATIVED

Hon. Frances Lankin: Therefore, honourable senators, in amendment, I move:

That Bill C-29 be not now read a third time, but that it be amended in clause 6, on page 3, by adding the following after line 31:

“(3) During the period beginning with the coming into force of this Act and ending at the expiry of the collective agreement, as extended by subsection 6(1), the conditions of employment for employees are those that existed on April 9, 2021.”

[Translation]

The Hon. the Speaker pro tempore: Senator Bellemare, do you have a question?

Senator Bellemare: I also want to speak to the amendment.

The Hon. the Speaker pro tempore: Senator Dalphond, do you have a question?

Hon. Pierre J. Dalphond: Yes.

The Hon. the Speaker pro tempore: There are two minutes remaining to ask Senator Lankin questions.

[English]

Senator Dalphond: Senator Lankin, if your amendment passes, it will mean we send the bill back to the House of Commons and wait for the reply, which could mean another week of delay. Did you consider the impact on the situation in Montreal?

Senator Lankin: Thank you for your question. Yes, certainly for Montreal, for Quebec and for Ontario, my province, the economic impacts that have been suggested could be possible are important for us to understand, so yes, I gave consideration to that.

Given how we have been able to expedite things over the course of dealing with emergency COVID legislation, I don't know that it would take a week. It wouldn't necessarily have to take a week. However, it is absolutely important for us to ensure that the legislation meets the test of minimal impairment and that

the imbalance provided by continuing to see the risk to the workers of unilateral job security provisions being changed. This amendment is both necessary and a fair implementation.

Because I just mentioned emergency COVID legislation, I'd like to note that there are other ways that things could have proceeded. I mentioned this in questioning during the Committee of the Whole. Bill C-14 has just come through and been completed in National Finance today. It will be before us on Tuesday, I believe. Within that, there is a provision for the government to pass regulations that would ensure the protection and prevention of a shortage of medical supplies, like drugs or drug components, for example.

I also point out that there has been an absolute offer that those things will be moved. That the union has not been asked to unload those particular cartons, to me, speaks to an approach taken that has allowed the situation to fester.

The Hon. the Speaker pro tempore: Senator Lankin. Your time has expired. On debate, Senator Gold.

Senator Gold: Thank you, Your Honour.

Honourable senators, first of all, Senator Lankin, thank you for your very thoughtful interventions and for the kind word you said about my remarks. Let me also say that you know how much we in the chamber respect you, especially your commitment to the Charter and your commitment to the rights of working men and women. As we say in French —

[*Translation*]

— that is to your credit.

[*English*]

I will not repeat anything that I said about the Constitution. However, your amendment does not address many of the questions and concerns you raised. That said, honourable colleagues, I want to, with great respect, submit that this amendment is both unnecessary and, in my opinion, inappropriate. The government cannot support it. Let me explain why.

As we know, clause 6 of Bill C-29 clearly provides that :

. . . the collective agreement is extended to include the period beginning on January 1, 2019 and ending immediately before a new collective agreement between the parties comes into effect.

All that means that Bill C-29 explicitly provides that the collective agreement that applied from 2013 to 2018 would be extended until a new collective agreement comes into force.

As we have been told and as has been remarked on a number of occasions, this collective agreement is the one that was successfully negotiated between the very same parties in the past. Therefore, when and if Bill C-29 comes into force, the parties would be required to abide by all of the terms of that collective agreement until the day that a new collective agreement comes into effect between the two parties.

[Senator Lankin]

Importantly, no unilateral modifications made by either side would stand upon passage of Bill C-29. Terms that were in the collective agreement that expired on December 31, 2018 would now be in effect.

According to the union, two measures that have been implemented by the employer since April 9 are at issue, as we have heard. The first measure relates to guaranteed paid hours, including unworked hours. We have received confirmation from the union, the employer and the minister that this measure would no longer apply because it is guaranteed by the collective agreement of 2013–2018.

The second measure relates to changes to the work schedules. Colleagues, I would note for the record this measure is consistent with the collective bargaining agreement that the parties agreed to in 2013. Therefore, it has been a part of their labour relationship for quite some time now.

What does this mean? It means the union was fully aware that the employer had schedule changes as part of their existing collective agreement because they had agreed to this as part of the overall collective agreement.

Colleagues, I must ask you to ask yourselves — we must ask ourselves — if it is the proper role of the Senate to remove measures to change a collective agreement and to remove measures that are part of the collective agreement that the parties, in fact, have negotiated between themselves.

The collective agreement provides an objective measure of the conditions that should apply to the parties for the period of mediation and arbitration until a new agreement is entered into through the Bill C-29 process. The amendment proposed by Senator Lankin would alter this objective measure. It begs the question, one that is perhaps academic to some: Are there other aspects of the collective agreement that the Senate may wish to alter? More to the point, is it our job, our role, to do so? I think not.

In my opinion, Parliament has no role in making changes to previously existing collective agreements, and it is for that reason, amongst others, that the government is not prepared to accept this amendment.

Ultimately, and notwithstanding all of this, because of the process in the Senate, we now know that this measure, although it is consistent with the collective agreement, will also be removed by consent of the employer. Indeed, in his responses to the questions posed by Senator Dalphond, Mr. Tessier committed clearly on behalf of the employer to remove the measure relating to schedules as soon as this legislation enters into force and revert back to April 9 working conditions as a measure of good faith to restart their negotiations from a neutral ground. I have no reason to question the commitment made by Mr. Tessier before Canada's upper chamber and before the public at large.

As a result, even if it were desirable, which the government believes it is not, Senator Lankin's amendment is simply not necessary. Moreover, colleagues, I think it's important for us to consider the real, practical ramifications of sending this back to the House of Commons, especially in a minority Parliament. We're here today because we've been recalled to deal with

Bill C-29 as it's a matter of urgency to Canada, especially in the context of the pandemic through which we are living. For us to move an amendment at this stage would leave the bill in legislative limbo for too long, even assuming the best-case scenario, where the government gains the support of another party to impose time allocation in the House. Passage of this legislation could be delayed by almost a week.

• (2030)

It is not fanciful to use a week, at least, as a measure of delay, with all of the consequences of which we've heard and about which I'll say no more.

Given the estimated costs of anywhere from \$40 million to \$100 million in costs associated with this work stoppage, given the impact on potentially hundreds of thousands of jobs, this would be a very significant price to pay for Canadians in order to enforce a state of affairs that we know could be in place as soon and as early as tomorrow.

Honourable colleagues, the responsible course of action, in my humble opinion, is to pass this legislation for the Port of Montreal to reopen and for the parties to initiate the dispute resolution process promptly so that the situation can find a long-term and stable resolution. Thank you for your kind attention.

[Translation]

Hon. Diane Bellemare: I also wish to speak against the proposed amendment.

While listening to Mr. Murray, the union adviser, this afternoon, my first reaction was to agree that it was a great idea to amend the bill to make sure that the working conditions in place prior to April 9 were restored.

However, after listening to the other witnesses, my opinion changed.

First, clause 6(1) of the bill clearly states that working conditions according to the previous collective agreement are restored, which therefore addresses the union's issues about wages.

Second, the testimony from the management representative convinced me that management is ready to withdraw its proposal regarding shift schedules and deadlines. The union also said repeatedly that if these two conditions were met, the workers would go back to work and end the strike.

Since, in my opinion, the meeting of these conditions is confirmed by the bill and the testimony we heard, and given that it is not our role to interfere in the bargaining process, I think it is appropriate to vote in favour of this bill to end a very costly labour dispute. Also, support for the bill in Quebec is nearly unanimous.

As a senator for Quebec, I will vote against the amendment and for Bill C-29.

The Hon. the Speaker pro tempore: Do you wish to participate in the debate, Senator Dalphond?

Senator Dalphond: Yes, Madam Speaker.

[English]

First, I concur with what Senator Gold has said. He put it more ably than I could have.

[Translation]

I would add that I also agree with my colleague, Senator Bellemare.

For these reasons, I will vote against the amendment, and I move that we proceed to the question.

The Hon. the Speaker pro tempore: Do any other senators wish to speak?

Some Hon. Senators: Question.

The Hon. the Speaker pro tempore: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: Those in favour of the motion and who are present in the Senate Chamber will please say "yea."

Those opposed to the motion and who are present in the Senate Chamber will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it. I see no senators rising. The motion is defeated.

(Motion in amendment of the Honourable Senator Lankin negated, on division.)

[English]

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-29, An Act to provide for the resumption and continuation of operations at the Port of Montreal.

Hon. Tony Dean: Honourable senators, I rise today to speak in favour of the bill in front of us. I speak in support of Bill C-29, which proposes to end the ongoing work stoppage at the Port of Montreal and would, in the alternative, put in place a neutral mediation/arbitration process to resolve the dispute and put in place a new collective agreement.

Like many of you, I do this reluctantly. Like many in Parliament and outside of it, I support free collective bargaining because it reflects the reality of workplace conditions and leaves the responsibility for bargaining outcomes in the hands of employers, unions and workers.

For these reasons, governments should only intervene in labour disputes when it becomes absolutely necessary in the public interest. This is the fulcrum of decision making and policy making in these relatively rare occasions where government intervention is being considered. I say “rare” because the vast majority of collective bargaining disputes in Canada are resolved by the parties. Indeed, we have heard that many collective agreements in the Port of Montreal have been resolved by the parties. This is because of the balanced nature of Canada’s collective bargaining regimes. It’s because of the sophistication of our employers and unions and because of the skills and perseverance of government-provided mediation services.

We have well over 90% of collective bargaining outcomes resolved by workplace parties, up to 98% in some sectors, sometimes with the assistance of federal or provincial mediation services. In the relatively rare cases in which bargaining becomes bogged down, government mediators are available to assist. In the present situation, experts from the Federal Mediation and Conciliation Service have been involved for some time. They don’t take this work lightly. It goes to the core of the mediation profession, and no stone is left unturned in providing support and advice to the workplace parties. Colleagues, that’s particularly the case where there’s a public interest component to this.

We’ve heard in the current situation that negotiations had spanned 30 months, with over 100 bargaining sessions, many supported by federal conciliators and mediators and in some cases, as the minister put it, a couple of super mediators. This doesn’t come close to describing the intensive effort, much of it quiet and informal, made by federal mediators to resolve this dispute. I know you’ll join me in thanking them for their efforts and I also extend thanks to Minister Tassi.

Colleagues, when we confront an impasse like this, we are instinctively driven to ask what more can be done to sort this out. It’s in our instinct to say there must surely be something more we can do. I know that feeling; I’ve been there many times, both as a bargaining agent, as a mediator and as the head of a mediation service, the head of a labour ministry.

• (2040)

Based on that experience, I can tell you that if there were any hope of getting an agreement here — in the short or medium term — the conciliators and mediators involved with this process over the past couple of years would have obviously put up their hand, cautioned the government and said, “You’re moving too quickly.” Believe me, they would say, “Let’s give this more time.” And governments take this sort of advice seriously.

After 30 months with the parties, the mediators know what’s doable and what isn’t. So it’s possible that this dispute could drag on for several more months and we would be right back here having the same discussion. In the interim, the flow of \$270 million in cargo a week would be halted with a knock-on impact on the 19,000 Canadians whose jobs, we hear, are tied to the operation of the port.

Now, I’m not a Charter expert; I listen to those who are. But from a Charter perspective, we’ve also heard that we are not looking purely at the economic impact of the dispute here — the government’s Charter Statement — and we’ve heard witnesses

tell us today that the port is a key gateway for the import of containerized essential products such as critical medical goods, pharma products, food and critical inputs for the farmer and food industries for the Quebec and Ontario markets. So the impact here clearly extends beyond straightforward economic damage.

I don’t find this easy. I would always prefer to see a negotiated outcome because these are the best for all concerned. But colleagues, this doesn’t look very likely here. So, in the alternative, Bill C-29 would create a balanced dispute resolution process in which an effort would be made to find consensus between the parties and a mediator-arbitrator, and we hoped that they would do that. But failing that consensus, the minister would appoint the mediator-arbitrator, likely from a list jointly developed over time by employers and unions, who would then have 90 days to complete the process with the possibility of extension by the minister.

We would all like to see this dispute settled and, indeed, a mediated settlement — while I agree is unlikely — is not completely out of the question.

I note that final offer selection was an option available to the mediator-arbitrator in the original version of the bill, and it was removed by an amendment in the House of Commons.

I’ll end by commenting that final offer selection takes away a bit of the predictability in normal arbitration processes. It introduces some additional risk and it gives the mediator-arbitrator some additional leverage in finding a deal or at least narrowing the range of issues in dispute. It’s worth a try as part of a suite of tools available to independent third parties.

But I’m not about to extend this discussion any further than is absolutely needed. The bottom line is I’ll support the bill as amended in the House of Commons. Thank you.

Hon. Michael L. MacDonald: Honourable senators, I came to this debate with an open mind. I listened to the testimony today. I didn’t intervene, but I want to speak now about a few observations.

What did we hear today from the witnesses? We were repeatedly told that we have to pass this legislation because of the COVID situation. Well, of course, we have to get medical supplies to people, but this is a false flag. Of course, we want medical supplies to flow. The union said they would ensure medical supplies would be handled without exception. Most urgent supplies would arrive by air transport in any event. So COVID fearmongering is not a valid or compelling argument as far as I’m concerned.

We also hear that it is an essential service. Certainly, it’s an important service, but is it essential? Well, the powers that be have already told us that it has been determined that it is not an essential service. There are Eastern Canadian ports — alternatives to Montreal. I remind honourable senators that the Port of Saint John, New Brunswick, can handle any ship that Montreal handles, and Halifax in Nova Scotia can handle the largest ships in the world — ships that Montreal cannot accommodate. And there is rail service from all of these ports. There is nothing that is offloaded and shipped out of Montreal

that cannot be offloaded and shipped by rail or truck from either Halifax or Saint John. So the argument that this is essential, again, is not a very compelling one.

If we had a proper national transportation system and policy that exploited the Port of Saint John and the three deepwater ports in Nova Scotia, we wouldn't find ourselves in this situation today, would we?

Of course, it's so interesting to hear the Liberal establishment who love to sing the praises of the Charter of Rights and Freedoms until it suits their purposes to ignore the Charter.

It's also very amusing to watch Senator Gold and the government's camp followers squirm over the blatant disregard being shown to the Charter rights in this particular instance. I wonder where all the social justice warriors have gone. All the Bolsheviks have disappeared from the Senate.

But, of course, we must be concerned about jobs. Well, of course, we should be. But where was this concern about jobs in the last Parliament when Bills C-48 and C-69 were passed with hundreds of thousands of jobs killed in Saskatchewan and Alberta and nobody cared in this part of the country? It begs the question: Why are jobs more important in the greater Montreal area than these other thousands of jobs? I believe all Canadian jobs are important.

I take substantial issue with expecting workers on a dockyard to be on call for 19 out of 21 days. Perhaps extending their work hours in camps or isolated areas makes sense of some sort, but not in this circumstance.

I'm reminded of my mother's father, whom I never met. He died in 1947; he was 74. But for the last 15 years, he lived with half a foot because he was working trimming coal for 12-hour back-to-back shifts on the coal pier. Tired, exhausted and the train went over his foot. This is what happens when people are working long hours in dangerous working conditions.

It is obvious to me that the Maritime Employers Association knew that the government would bail them out, so they didn't need to find a solution. They just walked, knowing the government would do their bidding.

I understand the economic concerns of people. I only wish economic concerns were treated as seriously in other parts of the country as they are in this particular situation. I don't think this has been handled very well in Montreal. Consequently, I will not be supporting this legislation, and I encourage honourable senators not to support it. Thank you.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I want to add my voice to this debate, and I will be brief.

I would say that my overarching emotion in dealing with this legislation today is one of discouragement. I am discouraged because, in the middle of this global pandemic which has caused such hardship for so many Canadians, we are compelled to address a problem which could — and should — have been avoided.

The situation that we face at the Port of Montreal is unquestionably damaging not only to the Port of Montreal and the people who work there, but also to every person and business that depends on that port as well as to the economy of Quebec and, indeed, all of Canada.

• (2050)

But it is a situation that I believe could have been avoided. In that sense, I am discouraged that we have a government that does not seem to know what the words “proactively resolving a problem” mean.

I say that because here we have a dispute that has been ongoing at the Port of Montreal for several years; where collective bargaining has been under way since September 2018; and where, during the first months of the pandemic, we witnessed work stoppages just last year. Yet the government has completely failed to get a handle on the problem and prevent what we are facing today, namely, a strike that is extremely damaging to all concerned.

Every step of the way, the government has been reacting to events as they have occurred. Sure, they appointed conciliators and mediators over a period of two and a half years. These mediators and conciliation officers worked with the union and the employer, facilitating over 100 mediated bargaining sessions.

However, prior to the recent work stoppage, the union still held five separate strikes, including an 11-day unlimited general strike that took place in August 2020. All of these labour actions and mediation had little effect on bargaining and in coming to a resolution. Yet somehow the government was oblivious to the intractability of the problem and the necessity of dealing with it in the midst of a global pandemic, where it was vital to keep commerce and vital supplies flowing to the greatest extent possible.

I asked the minister this afternoon, colleagues, whether she had spoken to the Prime Minister about this — the Prime Minister, a member of Parliament for a riding in the city of Montreal, the city most affected by this — and what he had done about it. She had no answer. The Prime Minister has been sitting on his hands instead of proactively and aggressively taking action to bring this problem to a resolution. As a result, no decisive action was taken to head off the major work disruptions we are facing right now.

What are some of the implications of this inaction? They have already been mentioned, but let me repeat some of them.

Most immediately, the unlimited general strike that started on April 26 is halting the flow of \$270 million in cargo every week. The strike is directly endangering the livelihoods of approximately 19,000 Canadians whose jobs depend on the port. The strike is causing damage to the Canadian economy in the order of approximately \$40 million to \$100 million per week. That damage will grow the longer the strike continues, yet we hear senators who say they will not support this legislation and will let these types of wasteful and economic problems continue.

In essence, we are now faced with the problem that the economic disruption being created by the strike is so extensive that even once this general strike ends, recovery is expected to take a significant period of time.

We know that last year's work stoppages cost Canadians \$600 million. Nearly 10% of the business sent to the Port of Montreal was lost. According to officials who briefed senators earlier this week, those losses may well be permanent, since many companies have shifted their traffic flows from Montreal to American East Coast ports. That means the permanent losses from last year are now likely to be compounded.

The *Financial Post* recently commented that the strike is further undermining Canada's credibility as a competitive manufacturing jurisdiction with a reliable trade infrastructure. Last year, disruptions from the work stoppages created a backlog of goods that took three months to clear.

I do not have to explain to senators the impact that such a backlog has on certain sectors, such as the agricultural industry. The Port of Montreal handles nearly \$900 million in containerized agricultural activity every year. Canadian agriculture producers were well aware that without uninterrupted access to this essential port, there would be a devastating impact on the sector.

To cite just one example, thousands of tonnes of fertilizer are imported through the Port of Montreal and farmers rely on that fertilizer. Colleagues on the House side have pointed out that if this strike continues, up to 1 million acres in Eastern Canada alone may go unfertilized.

The serious concerns about the potential closing of the Port of Montreal were raised by Conservative members in the House just last month, so there is absolutely no question that the government was aware this problem was coming. Yet nothing definitive was done, despite the work disruptions that occurred at the port last year.

In the Charter Statement that the government itself produced in relation to this bill, it argues the bill is justified because "The resumption and continuation of Port operations are important to the Canadian economy as a whole."

The Charter Statement says:

The Bill would prevent continuing and significant harms to Canadian businesses, their employees and those who depend on their services. . . .

The statement further asserts that "These harms are exacerbated by the COVID-19 pandemic" The statement notes that "Prominent companies have begun to divert cargo away from the Port"

All of these legal justifications for this bill were present and apparent well before the current strike. They were evident during last year's strike, which also occurred during the pandemic. Yet the government seems to have been paralyzed by inaction. At a minimum, it should have redoubled its mediation efforts with both parties. It should have been much more actively engaged

and determined to never permit the situation to come to another work stoppage. Ministers themselves should have been directly engaged.

Every senator in this chamber is strongly committed to collective bargaining rights. But the government also has an overarching obligation to protect our economy and all Canadian workers and businesses in these very extraordinary times.

The Supreme Court of Canada itself has found that associational rights may be limited in situations that involve essential services. Such limitations may be particularly necessary in situations of "acute national emergency and for a limited period of time."

I believe that few would argue that we are not now in a situation of acute national emergency. What I find deeply troubling is the way in which the government is handling the current problem at the Port of Montreal, in keeping with its broader approach to so many of the problems that have resulted from this global pandemic. The government is consistently reacting to external events as they occur. That was perhaps excusable in the first weeks of the crisis, but it is completely unjustifiable now.

Since the crisis began, there have been few examples of proactive action where the government has been able to get ahead of the game. I believe this is why most Canadians still have not been vaccinated and why the government is attempting to resolve problems essentially by throwing as much borrowed money as it can at those problems.

In relation to the strike at the Port of Montreal, all the government can do now is to desperately attempt to close the barn door after the horse has already left. The government has said that "The proposed legislation will end harm to Canada's economy, which is already weakened due to the COVID-19 pandemic."

But the reality, colleagues, is that the harm has already been done. All the government can do now is to try to limit the damage.

• (2100)

The government has said that the solution proposed in this bill will provide the union and the employer with "a neutral process to finally resolve their years-long dispute and establish a fair, new collective agreement between them."

But why did the government wait for the current crisis in order to take such a step? In relation to the crisis at the Port of Montreal, Perrin Beatty, the Chief Executive Officer of the Canadian Chamber of Commerce, has said:

The prospect of a second strike in seven months has disrupted supply chains in all industries and hampered Canada's economic recovery at a time of severe downturn.

We call upon all Members of Parliament to pass the bill expeditiously to prevent the serious damage a strike would have on jobs and on Canada's economic recovery.

I also agree, colleagues, that action must be taken. I will also be voting in favour of this legislation. I just wish that this action had been taken much earlier. Thank you, colleagues.

Hon. Marilou McPhedran: I want to express appreciation for all of the contributions that have been made in this very important debate. I have listened very carefully. I particularly appreciate the perspective Senator Lankin has brought.

I want to quickly summarize arguments that inform my decision on how I am going to vote. The COVID- and the pandemic-related arguments on security and essential medical materials do not hold up. Unions have consistently offered to exempt pandemic medical shipments from their strike action, and the overwhelming majority of pandemic materials are air-freighted, not maritime shipped.

As we have heard from different points of view, but referencing *Saskatchewan Federation of Labour v. Saskatchewan*, that ruling that the right to strike is protected under the Canadian Charter of Rights and Freedoms and an essential part of a meaningful collective bargaining process in our system of labour relations. That right is not just a derivative of collective bargaining, but an indispensable component of the right. Striking is the powerhouse of collective bargaining. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals.

Honourable senators, it is certainly true that no right in the Charter is absolute. However, the conditions to override the right under discussion here are not present. The Supreme Court made various decisions previously that recognized Charter values, including human dignity, equality, liberty, respect for the autonomy of the person, enhancement of our democracy and supported the protection of the right to a meaningful process of collective bargaining within the scope of section 2(d) of the Charter.

The right to strike is essential to realizing these values as well as through a collective bargaining process because it allows workers to withdraw their labour in concert when collective bargaining reaches an impasse. Strikes allow workers, through collective action, to refuse to work under imposed terms and conditions. This collective action at the moment of impasse represents an affirmation of these values.

I want to thank Senator MacDonald for acknowledging as clearly as he did the power play that was made by the employer in this case, and the way in which it is playing out to the employer's advantage.

Canada is a party to international instruments which clearly protect the right to strike. There is no question that protection of a right to strike is recognized in international law. Given the historical, international and jurisprudential context, it's clear that the ability to engage in the collective withdrawal of services in the process of the negotiation of agreements is the irreducible minimum of the freedom to associate in Canadian labour relations as protected under section 2(d) of the Charter.

Measures in the International Labour Organization, number 98, indicate at article 4 that where they are:

... appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Canada was made a party to this convention only in 2017, so this is a government, very much aware of these obligations.

Finally, the argument that these services are essential and somehow justifies overriding the right to strike has clearly been rejected. In the CIRB ruling, they state very clearly:

In this case, immediate and serious danger to the health and safety of the public related to the rerouting of vessels in the event of an interruption of longshoring activities at the Port of Montréal was not demonstrated.

They go on to say:

Undeniably, a longshore workers' strike at the Port of Montréal, even a mere slowdown of activities, would have definite consequences for all stakeholders along the supply chain that the Port of Montréal is engaged in. Shipping lines, logistics companies, manufacturers, distributors, railway systems, trucking companies and recipients will be affected to varying degrees. Increases in transportation costs, and possibly customs dues, will also be felt.

Colleagues, we have heard these arguments made today in our debate, and I think it's very important that we acknowledge that the board then goes on to say that:

... in its past decisions on essential services that the right to strike, like the right to lockout, is protected by the Code. These rights are exercised by one party in a labour dispute in order to place economic pressure on the opposing party and encourage the settlement of a collective agreement.

The fact of maintaining full longshoring services in the event of a strike, as the employer is seeking, without direct and compelling evidence that this level of service is consistent with the requirements of section 87.4 of the Code, would render the exercise of the right to strike ineffective ...

Free collective bargaining is seriously compromised if the right to strike may not be exercised by employees to counteract the employer's economic power.

Accordingly, the Board is of the view that the evidence is insufficient for it to allow the employer's application for the maintenance of all longshoring services ... In light of the evidence presented, the Board is not satisfied that it would be necessary to maintain all longshoring activities, as requested by the employer ...

In short, colleagues, those whose responsibility it is to regulate this industry have thought carefully, made a decision very recently, nothing new has been added through this bill, and it is for these reasons that I support the right to strike and will vote against the bill. Thank you, *meegwetch*.

Hon. Senators: Question.

[*Translation*]

The Hon. the Speaker pro tempore: Are honourable senators ready for the question?

Hon. Senators: Question.

[*English*]

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

(Motion agreed to and bill read third time and passed, on division.)

• (2110)

BUSINESS OF THE SENATE

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 16-1(8) and the order adopted earlier today, I wish to advise the Senate that a message from the Crown concerning Royal Assent is expected later today.

[*Translation*]

ADJOURNMENT

MOTION ADOPTED

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of earlier this day, moved:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, May 4, 2021, at 2 p.m.

She said: Honourable senators, I move the motion standing in my name.

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I ask for leave that the remaining items of Government Business be considered to have been called and stood.

The Hon. the Speaker pro tempore: Is leave granted, honourable senators?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (2150)

[*Translation*]

ROYAL ASSENT

The Hon. the Speaker pro tempore informed the Senate that the following communication had been received:

RIDEAU HALL

April 30, 2021

Mr. Speaker,

I have the honour to inform you that the Right Honourable Richard Wagner, Administrator of the Government of Canada, signified royal assent by written declaration to the bill listed in the Schedule to this letter on the 30th day of April, 2021, at 9:34 p.m.

Yours sincerely,

Ian McCowan

Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bill Assented to Friday, April 30, 2021:

An Act to provide for the resumption and continuation of operations at the Port of Montreal (*Bill C-29, Chapter 6, 2021*)

(At 9:54 p.m., pursuant to the order adopted by the Senate on April 30, 2021, the Senate adjourned until Tuesday, May 4, 2021, at 2 p.m.)

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