

that is, utilization of the traditional authority of the employer to deal with employee misconduct. If the employer's imposition of penalties is fair, the basic objective of deterring future unlawful activity will be served. In the view of your Committee, in other cases of unlawful activity, the Public Service Staff Relations Board should be provided with the necessary authority to deal with any infraction of the legislation. Resort to the courts should be limited to those cases considered to be serious offences.

With respect to those classes of action which we believe should continue to be subject to prosecution in the courts, the question arises as to whether prosecution should be dependent upon the consent of the Public Service Staff Relations Board. In this matter, we were persuaded by evidence presented to us by the Board's Chairman, Mr. Finkelman, who in addition to his experience in the administration of his section of the Public Service Staff Relations Act, was both architect and administrator of similar provisions of the Ontario Labour Relations Act. In a submission made to us on June 5, 1975, Mr. Finkelman reflected on his reluctance to recommend removal of the "consent to prosecute provisions" of the Act.

"One of the reasons for my hesitation is that such an approach would represent a sharp departure from a pattern that prevails in the legislation applicable to the private sector in most jurisdictions in Canada. Even if we were to conclude that such a requirement had outlived its usefulness in industrial relations generally, I believe the elimination of the requirement insofar as it relates to employees in the federal Public Service alone would open the door to a charge that such employees were being discriminated against, particularly so since in the public sector, the employer is both employer and government."

To achieve the general aim of limiting the involvement of the courts and placing greater emphasis for this responsibility on the parties concerned and on the Public Service Staff Relations Board, your Committee recommends:

23. That three procedural remedies be available for dealing with unlawful actions:

- (i) Disciplinary action by the employer, reviewable through the grievance process and adjudication.
- (ii) Prosecution of an offence before the Public Service Staff Relations Board, and disposition of the case by the Public Service Staff Relations Board.
- (iii) Prosecution of an offence in the courts after obtaining consent to prosecute from the Public Service Staff Relations Board and disposition of the case by the courts.

24. That the statute provide a schedule of offences and penalties applicable to the class of offence.

#### MAXIMUM PENALTIES FOR UNLAWFUL ACTIVITY

Your Committee has identified the following classes of actions which, under the present Act, are unlawful. These are:

- (a) Declaration, authorization or incitement of unlawful strike.

- (b) Discrimination against employees or employee organizations prohibited under the Act.

- (c) Participation of employees in an unlawful strike.

- (d) Intimidation of employees

- (e) Other prohibited acts by unions, employers or representatives thereof.

Having identified the nature of the offences your Committee constructed a schedule of penalties suitable to the infraction. Your Committee further decided that if the offence involves designated employees, it should in whatever class it falls, be regarded as more serious and should therefore attract more severe penalties than similar offences which do not involve designated employees.

Our recommendations with respect to the classes of offences which should be identified in the Act, the procedural options which should be available to the injured party in prosecuting an alleged offence, and the maximum penalties which the act should prescribe for each offence, are set out below. In determining the scale of the maximum penalty which should apply, your Committee reviewed and utilized those provided in Section 190 of Part V of the Canada Labour Code (which of course does not contain references to designated employees). With respect to offences which did not involve designated employees, our recommendations adhere generally to those established by the Code. However, we have recommended that the maximum penalties, where the infractions involve designated employees or interfere with the performance of duties by designated employees, be at least double those imposed against non-designated employees.

So that unlawful activity may be dealt with more effectively, your Committee recommends:

25. That unlawful offences under the Act be dealt with by identifying the party, the nature of the illegal activity, the available option and the forum before which the hearing would take place, and also the maximum penalties for each unlawful activity. (See Schedule 1)

Your Committee heard references on the practices which secure the termination of unlawful activity in exchange for a waiver of prosecution or disciplinary action. However, your Committee deplores such agreements where services affecting the safety or security of the public have been interrupted by an unlawful strike or lockout and therefore recommends:

26. That where "designated employees" have interrupted or impaired services by an unlawful strike or there has been an unlawful lockout and no action has been initiated by the employer or bargaining agent against the contravening parties, then a Special Commissioner whose office shall be independent should be empowered to initiate legal proceedings.

27. That the Special Commissioner's authority to initiate proceedings be limited to the period beginning 15 days after the date of the alleged contravention, and terminating 45 days later.

28. That the Special Commissioner should not be able to initiate any action against any person if a proceeding in respect to that offence has already been initiated.