matured and stabilized. On the contrary, we find that there is neither stability nor continuity in the existing processes of designation. In order to improve the designation process and to ensure that the public interest is protected under the collective bargaining process your Committee recommends:

15. That the Public Service Staff Relations Act be amended to require the designation of all employees whose functions involve the provision of services which in accordance with this Act are to be provided without interruption.

16. That the bargaining agents and the employers continue to be required to determine, by agreement, the employees in the bargaining units who are to be designated.

17. That the Public Service Staff Relations Board continue to be empowered to make determinations regarding the appropriateness of a "designation" where the parties cannot reach agreement.

18. That, where necessary, the techniques of examination, mediation and reference to established precedent be employed to resolve disagreements in connection with the determination of designated employees and to assist in what will be initially an extensive task.

19. That permanent lists of designated employees for each bargaining unit be filed with the Public Service Staff Relations Board.

20. That the Public Service Staff Relations Board establish appropriate processes for ensuring that the lists of positions and incumbents are kept up to date and for dealing with proposed amendments in the lists submitted to it by the employer or the bargaining agents concerned.

21. That the incumbents of the designated positions be informed by the Public Service Staff Relations Board of their obligation under the Act with special reference to the penalties for unlawful activity.

22. That the processes referred to in Recommendation 20 distinguish among proposals which involve a change in incumbent, a new position comparable to a position previously designated, and a position in respect of which the employer cannot rely on a precedent.

PROSECUTION OF OFFENCES UNDER THE ACT

During the course of the hearings and deliberations of this Committee the largest outbreak of unlawful strike activity in the eight-year history of the legislation took place. Between October 1974 and September 1975, the Treasury Board sought consent from the Public Service Staff Relations Board, as required by the provisions of Section 106 of the Act, to prosecute some 2,300 employees in 6 bargaining units for unlawful strike activity before the courts. Approximately 940 of these were alleged to be designated employees. Insofar as we can ascertain, in most cases where consent has been granted, the employer has initiated prosecutions in the courts. The judicial process has proven to be cumbersome and expensive, and the court decisions lacked uniformity.

The present two-stage process with its substantial costs, delays, fragmented administration, absence of precedents, and inconsistent penalties has led all parties to agree that the present system for dealing with unlawful activity is not working well and is inappropriate.

At first it was suggested that all prosecutions should be taken directly to the courts, thereby increasing the number of forums and simultaneous hearings. Arguments opposing this suggestion pointed to: judges unfamiliar with the public service and the relevant statutes, lawyers with insufficient time to prepare for such a mass of separate actions, an inability to group respondents or to make procedural arrangements on a national basis, and the lack of precedent or deterrent value.

In the context of this analysis, Mr. Finkelman suggested that allegations of unlawful activities by designated employees be heard by the Board and that those of non-designated employees be heard by the courts after consent is obtained.

This led to a proposal carefully considered but not accepted by the Committee which suggested that in cases of unlawful activities by designated employees, the employer should have three alternatives:

(*a*) To impose discipline, subject to the review by the Board of the appropriateness of the discipline, or its extent, through the grievance procedure.

(*b*) To seek remedial action by application to the Board, the Board to be empowered to impose a monetary penalty or to direct that disciplinary action be taken against the employee.

(*c*) To seek consent to prosecute an employee in the courts, the Board to be empowered to substitute for consent, on its own initiative or on request of an employee, a penalty or a direction that disciplinary action be taken in accordance with option (*b*).

Under this proposal, the employer would be entitled to resort to only one of these alternatives with respect to an employee involved in any one offence. On its face, this model appears to allow the employer complete freedom in the selection of the alternative, in that, theoretically all offences could still give rise to consent to prosecute proceedings and determination by the courts.

The existing consent to prosecute proceeding is one of the main characteristics of the present process and has been found to be cumbersome.

Your Committee believes that what is required is a procedure that reduces reliance on "consent proceedings" and on the courts. To achieve this objective, your Committee concludes that the statute should identify three procedural options for dealing with unlawful activity:

(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 Board.

(iii) Prosecution of an offence in the courts and disposition of the case by the courts.

Your Committee is convinced that minor infractions of the statute should be dealt with directly by the employer,